

***United States Court of Appeals
for the Second Circuit***



APPENDIX

1173

75-7162

UNITED STATES COURT OF APPEALS
for the Second Circuit

JOHN F. COSTELLOE,

Plaintiff-Appellant,

against

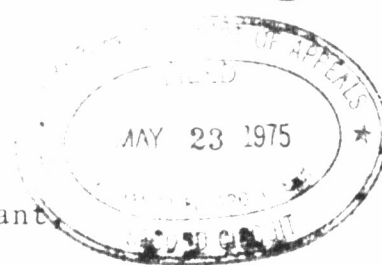
TRANS WORLD AIRLINES, INC.,

Defendant-Appellee.

On Appeal from an Order of the United States District
Court for the Eastern District of New York

JOINT APPENDIX

John F. Costelloe
Plaintiff-Appellant
216 Little Neck Road
Centerport, New York 11721
516 261-5235



PAGINATION AS IN ORIGINAL COPY

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VERIFIED COMPLAINT

1. Plaintiff pro se, John F. Costelloe, is an individual and a citizen of the State of Massachusetts. He resides and has his principal office for the practice of law in Lenox, Massachusetts, at Under Mountain Road, just North of Tanglewood Maingate. He also maintains an office for the practice of law at 216 Little Neck Road, Centerport New York, 11721, in the Eastern District of New York. Plaintiff pro se has for many years and to the present time been admitted to and duly authorized to practice law in the State of Massachusetts (admitted 1940) and in the State of New York (admitted 1948).

2. Defendant Trans World Airlines, Inc. ("TWA") is a corporation organized and operating under the laws of the State of Delaware. It has its principal place of business at Kansas City, Missouri. It has executive offices at 605 Third Avenue, New York City, 10016, and has administrative offices at Kennedy Airport in Eastern District of New York.

3. TWA is a scheduled airline engaged in the business of transporting passengers and cargo by airplane and ancillary means between points in the United States, and also between points in the United States and points outside the

United States. Transportation between points in the United States is profitable for TWA. Such business is conducted in competition with a number of other domestic airlines. Those airlines so competing have relatively few routes with points both in and out of the United States. TWA has many such routes. Most of such competition as TWA experiences in routes with points in and out of the United States is with foreign airlines and with one domestic airline, Pan American World Airways ("Pan Am"), a domestic corporation.

4. TWA and Pan Am are under the regulatory jurisdiction of the Civil Aeronautics Board ("CAB") and other agencies of the United States Government.

5. Pan Am has very few routes between points in the United States. TWA is unique in having large numbers of routes both between points within the United States and between points in the United States and in foreign countries. The former business of TWA is profitable and the latter is unprofitable. The similar business of Pan Am is also unprofitable. Both blame fuel costs occasioned by actions of oil producing countries, especially Iran.

6. TWA and Pan Am each owns or operates a substantial number of hotels in foreign countries through a domestic subsidiary corporation. Each hotel business is profitable.

7. It is common practice to provide by a variety of means foreign hotel and similar accommodations in connection with the provision of transportation by air between points in the United States and foreign points. Such provision has introduced different elements of competition into the regulated business of carriage by air.

8. Pan Am and TWA have complained for a number of months that in present circumstances, including the increased costs of fuel resulting from actions by oil producing countries such as Iran, their competition between the same points in the United States and out of the United States has threatened their financial well being and even existence. Each has applied for subsidy by the United States Government under laws requiring that the management of affected air carriers be honest and efficient. In the case of TWA, the CAB has found on at least two occasions that petitions drawn by its lawyers, Chadbourne, Parke, Whiteside & Wolff, a New York City law firm with offices at 30 Rockefeller Plaza in Manhattan and in Washington, D. C., were inadequate even as bases for consideration of subsidy.

9. On January 30, 1975, the CAB announced its decision to permit Pan Am and TWA to exchange routes so as to eliminate competition between the two carriers on major routes between points in the United States and points outside the

United States. Such permission was given for the period of about a year and a half, instead of the requested period of about 5 years.

10. On January 31, 1975, TWA complained publicly at the short period for which permission had been allowed by the CAB. It said that the costs of changing and unchanging in such a period could make the net results financially disadvantageous. It had about a week earlier announced a program of grounding wide-bodied airliners it had been operating, including 747 airliners manufactured by Boeing.

11. In an NBC news broadcast beginning at 7 P. M. of Friday, January 31, 1975, after the close of normal business hours, it was announced that TWA had sold 6 of its 747 airliners to Iran for a total price of nearly \$100,000,000; and that it was planning the further sale of a similar number of 747 airliners to Iran. Such sales would leave TWA with but 7 of the 747 airliners in operation.

12. Without use of 12 of its 19 747 airliners the capacity of TWA would be curtailed drastically and for the long term. Its newer aircraft, the Lockheed 1011 widebody airliner, lacks long range capability. Its older aircraft with long range capability are generally considered not to be competitive with the 747 airliners which would be operated in competition with TWA. Procurement of aircraft for

airline service such as provided by TWA normally takes years of lead time.

13. In the weekend following that announcement on Friday, January 31, 1975, after the close of normal business hours, there were further revelations of actions to affect the competitive situation of Pan Am and TWA.

14. Where Iran had bought a major segment of the equipment of TWA for competition between points in and out of the United States, and was said to be about to buy as much again, it then appeared that Iran had moved on Pan Am in two major respects, one of them involving for Pan Am the other part of competitive requirements in its business of carriage between points in and out of the United States. Iran had bought, it was reported, a 55% interest in the hotel subsidiary of Pan Am, thus giving it control of that operation. Iran had also agreed to provide financial and other aid upon which Pan Am would be vitally dependent.

15. By these means, Iran got effective control of both Pan Am and TWA. As to the former, it got control of the vital ancillary hotel business and also created financial dependency. As to the latter, it got control of the other vital segment of the business, airline equipment needed for carriage of passengers and cargo by air.

16. The net effect of developments over the weekend was thus to make known the acquisition of effective control of Pan Am and TWA by Iran and the effective frustration by such means of the stated policy of the CAB to permit restriction of competition by agreement for only a limited period of time, one and a half years. This is in contravention both of policy of the CAB and of the statute under which it operates and also of the policy of the United States Department of Justice, which had opposed even the limited action taken by the CAB as announced January 30, only to be followed by the astonishing developments of the weekend.

17. Those developments came at a time of deep national concerns. Iran had been endeavoring to get effective control of Lockheed aircraft, and had recently contracted to buy from Grumman military aircraft and technical aid costing in the billions of dollars. The 747s acquired from TWA have military and strategic significance. They have demonstrated military utility in airlifts. They have probable potential for launching nuclear missiles. They embody technology which Iran could use as a trading point with, say, USSR.

18. Layoffs and firings are proceeding in such manner as to make the weekend announcements definitive. Aircraft deliveries to Iran by TWA are about to commence.

19. The terms of "sale" of the 747 aircraft by TWA to Iran and of the further proposed sale have not been announced. On the one hand, it cannot be assumed that the sale is outright for spot cash. There must be continuing obligations of TWA to provide technical aid and management services, and corresponding assurances to Iran by delays in at least part of payments. There is on the other hand no showing that the transactions do not have many of the aspects of leases and indeed are not disguised leases. TWA experience includes transactions styled as leases to give tax attributes to banking interests to get their taxes down to an effective rate of 14% or so compared to the TWA sometime rate of zero, which, by virtue of guarantees, probably actually are purchases. IRS rulings to the effect that they are leases may be invalidated upon consideration of aspects of pressure and payments.

20. In these circumstances the financial condition of TWA is of vital importance to its stockholders, the banks, and other investors, and to the Governments of the United States and Iran, among others, as well as to other airlines.

21. That financial condition has been misrepresented by TWA through use of the mail and in transactions in interstate commerce in violation of provisions of Securities Acts

of 1933 and 1934, and of provisions thereof and of Rules of the SEC, including Rule 10b-5 thereof.

22. TWA represents its tax liabilities to be clearly such as to be consonant with its financial solvency in all aspects, although it is in default in some debt service payments. The fact is that its tax liabilities are such that TWA is in all probability insolvent to a grievous extent. Recent events demonstrate tax liabilities are grossly understated, by acts of omission and commission, to misrepresent its financial condition in controlling material respects intended to and actually affecting the market appraisal of its condition and the selling prices of its stock and securities.

23. At about the time of the reelection of President Nixon, Spater, then head of American Airlines (and former partner of plaintiff in a Chadbourne firm), was convicted for foreign laundry of American Airlines funds abroad covered by false counter book entries to provide cash for payment to CREEP (Committee for Reelection of the President). He lost his job and suffered conviction but not incarceration, with American Airlines paying his lawyers' bills of \$175,000. Spater then complained that that activity was trivial in comparison to the corruption involved in airline kickbacks.

24. Airline kickbacks are involved in airline ticketing practices. Thousands of travel agents have power to fill out blank tickets into completed tickets good for transportation by air on TWA and other airlines. In many circumstances tickets are a more desired item than the dollars.

25. Travel agents are allowed by law for their services amounts as much as 11% of the face value of tickets so provided. In many cases, however, they get as much as 50%. TWA has been especially notorious in permitting illegal kickbacks to travel agents.

26. In a spot check at Kennedy Airport just after the reelection of President Nixon, irregularities were found in more than a third of the TWA ticketing transactions. This was twice as bad as the next worst record, that of Olympic. It was more than 15 times worse the record of Pan Am.

27. In May of 1974, there was a press report of grand jury proceedings in Eastern District of New York considering airline kickbacks and route swapping. On December 21 there began further press reports of airline kickbacks. Two grand juries in Brooklyn were reported to be concerned, and there were reports of airline confessions of criminal guilt. Kickbacks were said to have run to the hundreds of millions of dollars and to be continuing.

28. Beginning January 1, 1975, there were press reports of public statements by Minnesota Mining and Manufacturing Company and by Ashland Oil Refining. Each involved use of a political slush fund, with diversions to it covered by false counter entries in financial records, thus following the pattern of Spater, his laundry operation, and the pattern of divertors generally: false Canadian inventories for Costa of McKesson & Robbins; false receivables for National Student Marketing and Sterling Homex; false policies for Equity Funding; misrepresented assets for Standard Life; fictitious salad oil for D'Angelo; and water in purported oil wells and lines of Home Stake Oil.

29. For 3M, the diversion was said to involve potential costs in taxes, penalties and interest of as much as 50 times the amount of tax benefits claimed by way of deductions shown for amounts diverted to the slush funds. Former officers, present directors, have agreed after suit, to pay back to 3M about the amount of diversion. They have suffered criminal indictments, States and Federal. Ashland seems to be similar. TWA is, by all reasonable inferences, including its connections and activities with CREEP which time does not now permit to be stated, worse in kickbacks than either in what they did.

30. Amounts involved for TWA are vastly greater as to kickbacks alone. It is also possible that litigation following deficiency assessments in pipeline matters as to which there is doubt of integrity of accounting, and occasioning action by TWA in United States Tax Court in July, may in itself produce very large deficiencies in tax, to be increased by addition of fraud penalties if only in respect of the kickback matter.

31. These tax aspects are matters of fact requiring disclosure and as to which there must not be misrepresentation by omission and commission, as there has been here, in violations of laws and rules of the SEC. This has been made emphatic by recent statements of SEC officials.

32. The misrepresentations of TWA financial condition have been and are of continuing harm to TWA stockholders and investors and must be stopped by injunction and other appropriate means. The misrepresentations have been by TWA management in bases of insider information which they have concealed and turned to their own advantage by seeking to ensure their job tenure at enormously large salaries and other emoluments by producing the fait accompli attempted as shown by announcements over the weekend.

33. This Court has jurisdiction of Securities Acts and antitrust aspects without regard to diversity (Securities

Act of 1934, Sec. 27; 15 USC 15) and diversity jurisdiction also exists. Plaintiff has legitimate interests of his own, as a beneficial owner of TWA common stock held in the name of his son, Kevin Costelloe, and as one who is being prevented from proper use of airline travel by monopolistic combination in restraint of trade outside any permissible exception.

34. Such are the realities that unless action is taken forthwith the attempt to produce a fait accompli may actually be effective, especially since a foreign power of enormous import for our Nation has been involved as it has. Service is to be stopped under the restrictive agreement between TWA and Pan Am March 2. Layoffs are in process. Airplanes are about to be delivered to Iran. Other airlines may be precluded from picking up abandoned routes by intervention of the sovereign state of Iran, as to whom Tillinghast, head of TWA, is reported in the Wall Street Journal of February 3, 1975, as follows:

"Mr. Tillinghast credited much of the success of TWA's 'complex' negotiations to the Shah of Iran's 'clear understanding of the importance of United States technology as well as the economic difficulties facing the people of the U. S.' and 'his personal desire to be helpful.' * * * TWA spokesmen had denied until last Friday that the transaction was about to be consummated."

35. The New York Times of the same day carries an account of the stated intention of the Shah to protect air rights of Kuwait by military means.

36. TWA has sought to discredit me as a lawyer and to ruin my practice by such and other means, after I raised questions as to propriety of its dealings in getting so-called aircraft rulings involving payments to the campaign funds of Congressman Mills. It has refused to pay me for services rendered quantum meruit in 1969 and 1970 in adjusting with almost complete success income adjustments asserted against it on audit of tax returns through 1968 of more than \$100,000,000.

37. I state this to make known my interest and to apprise the Court in general of prospective amendments to assert claims for compensation and damages against TWA and possibly also others including partners of Chadbourne who are citizens of States other than New York and Massachusetts.

38. The matter of urgent and immediate importance is to have preliminary hearings as soon as may be to pass on the requested preliminary injunction requiring TWA to state its true financial condition as was done by 3M, and to stop further action in attempted consummation of fait accompli with the Shah of Iran and Pan Am.

39. Request is respectfully made for such temporary injunction, without requirement of bond, in view of the public interest aspects, and of the weakened condition of my own resources by TWA efforts to neutralize me as a factor in this and similar matters. Demand is also made for such other and further relief, by way of damages, compensatory, punitive, and otherwise, and by way of injunctions, in respect of antitrust, SEC and similar matters, including insiders' profits, as may be found appropriate on further proceedings.

40. In conjunction with consideration of the requested temporary restraining order, consideration may be given to roles of myself and possibly others as counsel, individually and possibly derivatively and by way of class action under FRCP 23. Time does not allowed for detailed statements normally required by General and Local Rules.

41. Nor does time allow development of critical facts of relations with the Internal Revenue Service, illustrated by the copy of letter to the Internal Revenue Service included in sealed envelope made Exhibit A. Seal is used to preserve confidence of a matter which the IRS may not want disclosed further at this juncture except to the Court in camera.

42. Opportunity should be given for intervention of the Internal Revenue Service and the Department of Justice, with whom I have been in communication, and of such other agencies as may be thought appropriate, including the SEC and the CAB and the Department of Transportation.

Dated: Centerport, New York
February 3, 1975

AFFIDAVIT IN SUPPORT OF MOTIONS UNDER FRCP 65

John F. Costelloe, plaintiff, pro se, being duly sworn, deposes and says, on the best of his knowledge, information and belief, that:

1. The statements of the Verified Complaint are true. The letter to the Internal Revenue Service made Exhibit A is a true and accurate copy. The book of attachments brought to Court is the one prepared for transmittal under separate cover to the Service. Another copy is being prepared for that purpose in the event the Court decides to accept and retain that book of attachments.

2. These papers concern matters believed to be of urgency in public policy, and disclosed in significant part in the time from after the close of business Friday last to the time of publication of New York Times and the Wall Street Journal of this date, the Monday following.

3. In compliance, in the special circumstances, with notice requirements for temporary injunction under FRCP 65, I called by telephone this morning, TWA Vice President Raymond Fletcher, its in-house chief lawyer. I said that I proposed to file papers having the substance of these, which I described. I said that time was limited and so were copies. I offered to meet Fletcher at Brooklyn Court House to review the papers with him. He declined. I offered to

deliver them to his office and wait for them. He declined. I asked what to do. He said to do what I wished or to call Chadbourne, Parke, Whiteside & Wolff, a New York law firm of which I was a member in a previous form. I said that I thought it would be inappropriate for me to take the initiative, especially since I believe that that firm is in such conflicts of interests with TWA that it would properly be subject to motion to disqualify, and that such motion would be granted.

4. I plan to deliver these papers to the Court in person today if at all possible. I plan to have a messenger deliver a copy of the papers (other than Exhibit A) to TWA executive offices, c/o Fletcher. An affidavit of Service will show the facts.

5. In the circumstances, I believe that there has been notice for purposes of temporary injunction under Rule 65. Alternatively, I request treatment as temporary restraining order on the showing made here and in the Verified Complaint.

6. I will submit these papers to the Court in Brooklyn after first inquiring of the Emergency Judge or other appropriate person.

7. I plan also to submit a copy of these papers to U. S. Attorney Trager and to the Internal Revenue Service.

8. I undertake these actions reluctantly, especially after my experiences at the hands of Chadbourne and TWA as referred to in materials submitted, especially as shown in attachments to Exhibit A to the Verified Complaint. I do so, however, in belief that special experience and knowledge impose special duties on me under the doctrine in Meyerhofer illustrated in 3M and Ashland Oil matters referred to and as commented on by Governmental officials at recent meetings of the New York State Bar Association.

9. In view of the amounts and subject matter involved and the public interest, I move that no bond for security be required, and that if one is, it be in small amount reflecting my reduced circumstances in consequence of actions of TWA and Chadbourne.

10. I believe that amendments to the Verified Complaint will be in order in a number of respects which time does not now permit.

11. I believe that the Court should issue its temporary order forthwith and in no event later than the close of a hearing which the Court may see fit to set down at a time and place as soon as convenient for the Court.

Dated: Centerport, New York
February 3, 1975

ATTACHMENT TO AFOREGOING VERIFIED COMPLAINT

Sommers T. Brown, Esq.
Acting Chief, Trial Branch
Tax Court Litigation Division
Office of Chief Counsel
Internal Revenue Service
Washington, D. C. 20224

January 27, 1975

Re: Trans World Airlines, Inc.
Docket Number 5905-74

Dear Mr. Brown:

This is in partial response to your letter of January 13, 1975, indicating interest in "specific facts" of the question of integrity of TWA pipeline asset accounting.

I am going through my files for such "specific facts." My files end several years ago so far as any direct connection with TWA operations is concerned.

The assessment of deficiencies in tax came after about a decade of efforts to reach agreed settlement. In the Tax Court proceedings the Government has the benefit of the usual presumption of correctness of the deficiency assessed.

I was the senior tax partner of Chadbourne, Parke, Whiteside & Wolff until June of 1968, and I personally attended to the more important aspects of TWA tax matters as partner before that time and as consultant and otherwise for some time afterwards. I tried for years to get pipeline data, with help of several successive TWA Tax Directors. None of us could get data available normally. None believed

that data made available to us established existence of the assets. In some other respects, including some liability accruals, TWA had on occasion reached specific dollar amounts on only the broadest of assumptions.

The pipeline asset accounting function was lodged in the maintenance function, out of the mainstream. I continued as a consultant on TWA matters after leaving the firm in protest of Dunn's acting both as Chadbourne Senior Partner and employee of a client, Sperry, in purported membership in its "qualified" retirement plan. After leaving Chadbourne, I continued to negotiate for TWA, with almost complete success, settlement of other proposed income adjustments running to about \$150,000,000, including pension matters (A). I could not, however, get data on pipeline assets. I recommended partial settlement, with the pipeline and maintenance matters left open (B). Efforts continued in anticipated refusal to accept the TWA positions. A memorandum of mine of February 24, 1970, (C) epitomized continued frustration:

I told Joe that I felt that a good deal of work would be in order on the matters yet unagreed - overhauls and pipeline. In all the years I have watched these issues I have never heard of a thoroughgoing development of the facts of the sort which I think Appellate Division should have to support a favorable determination - if not to try to right a prospective unfavorable determination.

I did and do suffer differences over payment quantum meruit for the work I did in effecting settlement of the other matters. That required effort and skill, with very favorable results in work with IRS staffs in Kansas City, St. Louis, Chicago and Washington. At times there was work with more than one unit of an Office. For example, development of conflicts between audit and rulings personnel in Washington National Office brought results favorable for TWA.

Matters dragged on, and my old firm, Chadbourne, held back on large items owing and otherwise payable to me, to try to force an overall settlement to its advantage, especially in implicating me in unfolding TWA matters and in the dual role of Dunn, though I had left the firm as the only effective form of protest available in 1968. The Dunn role is only now under active consideration by the new Sperry auditors, Arthur Young & Co., after going into litigation with Sperry. Chadbourne has included TWA in that Sperry litigation (D).

There has been skepticism of airline practices, notably kickbacks and foreign repairs. Late in 1972, when President Nixon was reelected, my former Chadbourne partner Spater, who had come to head American Airlines, admitted use of laundered funds to pay CREEP. The foreign laundry of American

Airlines money had been covered up by false expense and supplies accounts. While so pleading--at cost to American of \$175,000 in his lawyers' fees alone--Spater complained that what he did was slight compared to kickbacks. He suffered conviction and ouster.

A check at Kennedy, days after the Nixon reelection, showed that TWA ticketing irregularities were twice those of the next worst offender, Olympic, and many times worse than those of Pan Am (E). Grand jury study followed, and by May of 1974, TWA executives were under serious scrutiny, especially after experience with reverse foreign laundry, i.e., foreign cash brought to this country from a foreign country to do what Spater had done abroad with U. S. currency.

In a meeting with personnel of the U. S. Attorney's Office and the CAB on the day President Nixon announced his resignation, I expressed concern that the other side of large kickback amounts might be in false pipeline accounting. TWA had recently conceded as to foreign repairs in customs proceedings in manner not altogether reassuring as to this. Diversion usually has its other side. 3M involved insurance premiums and legal fees. Ashland's slush fund and Spater's laundry were similar. There had been water where oil should have been in Home Stake Oil; nothing where salad oil should have been in the D'Angelo fraud; Canadian inventories which

existed only for Costa of McKessen Robbins; fake policies for Equity Funding; and nonexistent receivables for National Student Marketing and Sterling Homex. The Justice people had expressed special concern for legal fees as possible coverup for kickbacks. In the Hughes matter, legal fees were said to have run some \$20,000,000 in all for TWA alone, although TWA got nothing but a dozen distracting years of false hope, which in turn very probably had a part in its presently overequipped plight. In inquiring for stockholder interests, I have long found TWA most reticent about the fees in the Hughes matter.

The possible accounts for kickback coverup are numerous. Thus, it is not uncommon to use advertising and printing accounts in some lines of business, e.g., the Grumman and American Airlines commercial kickback matters which have evoked public notice from time to time.

Of course TWA presented special problems. Its multi-national operations, involving ticketing without effective control and fungible assets, seemed, I said, a divertor's dream. I suggested that some of the torrents of hot money which had CREEP awash in cash might have come from there. I said that I understood that TWA had an especially strong system for getting money from employees to politicians. I pointed out also that cases such as National Student Marketing,

Equity Funding, and American Airlines, taught that it is possible to implicate quite large numbers of employed individuals in patently criminal conduct, often with considerable chances of success at coverup for a time at least. Note also Standard Life.

I noted problems of taxpayer confidence. I expressed concern that several agencies of Government should seem ineffective in coping with a notorious scandal. I suggested drawing on the experience and considerable forces of the Internal Revenue Service. I suggested that the various agencies of the Government join forces. In this I drew on my own experience in study of Government as a member of a so-called President's Panel under auspices of Treasury, Justice and Commerce (F).

That was the day Nixon announced his resignation, August 8. On December 13, TWA's Fletcher, for the first time, admitted participation in the group effort mounted on the basis of the Sperry litigation to put me out of all courts for all times (G). The December 16 issue of Aviation Weekly reported the Transportation Department draft legislation which would involve IRS directly in ticket auditing (H). Compare the recent legislation making the IRS and Labor responsible and giving individuals rights to declaratory judgment in the Tax Court of the United States. The result

has strikingly increased IRS awareness in a field where its effectiveness had been thought low.

On December 21, the New York Times reported airline confessions on kickback matters (1).

I have had much experience in control of tax data. I spent some years in Government, first as Supreme Court Law Clerk (Jackson's first) and then in the Tax Division of the Department of Justice, and on to being Tax Counsel and later Tax Director of PCA, before joining Chadbourne as its tax partner in 1958 at its initiative and invitation. There, I represented a highly sophisticated clientele, with North American Aviation, Sperry Rand, TWA and American Brands and Anaconda, among the firm's general clients; and with Western Electric, Litton, Interpublic and others who came to me as clients while I was at the firm. I had come to see the Government often in better control than the taxpayer. Book accounting often reflected insistence on earnings showings and the like. Tax accounting was, however, normally draconic in rectitude and integrity.

Any accounting, even tax, can fail. Consider the cases noted, and earlier ones such as Kreuger and later ones such as Black Watch and Standard Life. In many, e.g., Home Stake and Standard Life, sophisticated persons with serious professional and commercial responsibilities were taken in,

partly, perhaps, in belief that the Internal Revenue Service was more alert and effective than it was. Only now are the Service and the SEC joining hands to deal with the reality that taxes are the dominant fact of life; and that they are the ultimate determinant of our values, fixing the after-tax dollar which has displaced the old pure dollar as the norm of our values (J). This was apparent Thursday, January 23, 1975, at State Bar, where, for the first time in my experience, I heard a Government representative discuss tax and SEC matters in recognized interaction. Gouervitch, Tax Counsel, Division of Corporation Finances, Securities and Exchange Commission, left no doubt. The notion that taxes can be thought of separately simply had to go if the sovereign was to get the \$350 billions of dollars a year or so it must have. Some are even coming to think that, taking into account inflation and replacement costs, the Government actually gets all of the distributable yield from the operations of many major businesses.

Taxes are not the only area of Government recording and accounting which has occasioned disappointment.

The cargo door which failed at cost of 346 lives outside Paris had been recorded as having been retrofitted at the factory when it had not (K). In the meeting on August 8, the CAB man expressed concern at the failure of Government

accounting in this respect. Later it developed from a Congressional report that an FAA report on that tragedy had been suppressed (L).

The Brooklyn grand juries' work on airline kickbacks and related matters continues apace.

On January 1, there were press reports of a 3M SEC statement covering liabilities of tax and tax penalties of as much as \$10,000,000 for disbursements of about \$500,000 by way of slush fund, with usual false counter book entries (M). Ashland Oil later reported delay of a directors' meeting to permit similar statement as to its slush fund lest the SEC claim invalidity of stockholders meetings (N).

Note the recent account of the indictments of former officials (present directors) of 3M (O). A partner of Haskins and Sells, the auditors for TWA, was named co-conspirator though now dead. The consequences for individuals and 3M could have come as no surprise to anyone who has followed National Student Marketing on through Meyerhofer. The bar is only now coming to realize what has been happening. One aspect was, as it were, epitomized by attempted passing off, of Liggio, an employee of Arthur Young & Co., formerly associated with White & Case, as a partner of Arthur Young at a City Bar program on disclosures by lawyers to accountants on January 16, 1975. Tom Flynn, No. 2 at Arthur Young,

called me the next day to apologize and to say that he had directed a partner of his firm to study the passing off of Dunn in Sperry in the litigation to which I have referred (P).

Although I, like the Government, may be short of specifics, I did have enough concern to resign my partnership in Chadbourne in 1968 in protest of the passing off of Dunn. The result has been financially disastrous for me and my family. I am quite literally set upon by an astonishing array of forces linked in figurative dirty hand in dirty hand. At the moment, I am beset by Sperry and TWA and others, including American Brands and Anaconda and Gulbenkian Foundation, who, by their own actions, evince concerns lest I for them too "go beserk" and tell the truth (Q). One might add Arthur Young by way of its employee Liggio, who has brought in others involved in properly separate litigation (R), while leaving out still others for reasons apparent in self interest, especially in unfolding of last Friday's news concerning yet another client of a major law firm (S).

I continue to review my files. There is but the one of me to the numbers bent on destruction of one who would disclose, rather than take corrective action as to destructive practices by disclosure and other means. I would be pleased to meet with you or representatives of your staff

and to permit examination and even copying of my files in their entirety.

This has broad and serious implications.

I negotiated the basic airline leasing rulings for TWA. The banking interests demanded maximum benefits of investment credits and fast depreciation, while spreading risks of TWA credit to investors who bought certificates. To meet demands of the banking interests, TWA had to give general guarantees of payment of related debt. This put the possibility of a real lease into strong doubt. Arnold Levine, of what was then the office of John Littleton, expressed the doubt strongly and ably.

TWA brought in a Washington lawyer, Riddell. Riddell brought pressure to bear. I learned of this in any significant way only after parting company with TWA. It later appeared that TWA had paid Riddell some \$50,000; and that Riddell later paid this much and more to the Mills campaign (T).

My concerns have increased with disclosures in the ITT/Hartford matter, and with developments in payments to politicians (illustrated in the Ashland and 3M matters) directly linking taxes, tax liabilities and tax penalties, financial statements, and SEC liabilities.

I have not been able to get anything like satisfactory assurance in the specific matter of payment to Mills' campaign, or of the system by which TWA provided funds for campaign and similar activities.

The United States has direct interests not only in revenue but also in transportation matters. If kickbacks are disallowed in manner of 3M, TWA could not by any stretch of the imagination be solvent, and would make a much less attractive merger candidate or instrument of policy than would otherwise be supposed.

By putting to TWA, tax attributes claimed by banks on the theory that the leasing rulings are invalid, the Government would greatly increase the banks' tax liabilities. It might still be true that TWA would pay no taxes. There could be enormous increases of the banks' taxes, bringing them closer to going rates than the 14% or so Chairman Ullman has complained they pay. Chairman Ullman also complained that airlines such as TWA conducting other businesses (such as hotel business and food services for sport arenas and the like) paid no tax. It is quite possible that the real tax burden of all referred to is far greater than he indicated, and indeed conceded to be presumptively correct.

Controversy with the sovereign is seldom good business beyond the point of reasonable settlement. For example, if

the Government puts into litigation in the deficiency proceedings clearly questionable TWA items such as prepaid fare income, and if it takes a realistic view of pension plan matters TWA might in any event be a taxpayer, though insolvent.

Lively interests in pension matters under the new pension legislation practically ensure scrutiny in an area where discrimination in favor of the highly paid pilots has long been quite clear as matter of fact.

Urgency is increased by the enormous loss of lives associated with questionable airline practices, e.g., the horror at Mount Weather.

The leisurely processes of tax litigation are too slow to meet needs so presented. While I was Tax Director at RCA, I effected settlement of its World War II excess profits taxes on terms which I thought highly favorable. The outside law firm recommended litigation and so the matter went. I was told that the matter would be disposed of in two years at most, but it went on for more than 17 years. Settlement was ultimately effected in basic error of the Government's failure to appreciate the significance of ownership of outstanding stock of VTG. I stood by in silence in belief that I was constrained by ethical considerations so to do. I no longer so believe.

In the meantime, I encouraged one of the lawyers in the retained firm who had been disappointed in not being admitted to partnership there to come to Chadbourne in hopes of a partnership. He did. After I left, he spent time over a period of more than 4 years, as a Chadbourne partner, with the pipeline matter before it went into litigation. The present effort by that firm to put me out of all courts for all times is a patent attempt to prevent me from voicing concern as I do here and soon will in private litigation with TWA (the U. S. Attorney's Office having informally indicated that it respects my rights so to do and has no objection).

There are other matters and aspects of urgency here.

Such are the increasing forces of conscience and public arousal and Government needs, and prospects of need to restructure air transport, that questions which might have lacked force are now clear and immediate and call for greater expedition than provided in normal course of tax litigation.

I saw the Great Depression come and stay through want of confidence after a regime in which industry was allowed to run rampant in self-regulation. Now we see an industry as having neutralized whole segments of Government, e.g., the FAA, 55,000 weak. My own financial and career interests have been severely damaged by accidents of contacts those

briefly indicated here and developed in somewhat more detail in some of the enclosures.

Consider, for example, the wide spread Sperry has repeatedly given the matter in misleading fashion as shown by the excerpt from its last Proxy Statement and its last post-meeting report to stockholders (U). At State Bar Tax Section last week old friends and colleagues asked whatever has happened. I told them of Dunn and of the suit to put me out of all courts for all times, renewed only December 30, after all that had happened since the first effort in June. The reactions were (a) horror; and (b) if Sperry can do that for Dunn why can't my clients do it for me; and the heck with Keogh!

I remain willing within the limits of my means to do what I can towards correction.

Please feel free to call, and I may call you when I am in Washington next week.

I am sending a copy of this letter to Mr. Trager, U. S. Attorney for the Eastern District, where the kickback grand juries have been functioning; and to Mr. Albert of Intelligence. I may have occasion also to send copies to the SEC, and to the Secretary Designate of Commerce, and to the Attorney General, Designate, as well as to Committees of Congress. Otherwise lives may be lost and National interests gravely

injured without need. If you have any objection or suggestion,
please let me know at once.

Respectfully submitted,

John F. Costelloe

ORDER SEALING FILE

Defendant Trans World Airlines, Inc. having moved for an order directing the Clerk of the Court to seal the file of this case;

NOW upon reading and filing the motion of defendant Trans World Airlines, Inc. and the affidavit of Harold L. Warner, Jr., sworn to February 3, 1975 in support of defendant's motion, and after due deliberation;

IT IS HEREBY ORDERED:

The Clerk of the Court is ordered to seal the file of this case, including any other papers hereafter filed, until further order of the Court.

February 4, 1975

/s/ Orrin G. Judd
United States District Judge

ORDER TO SHOW CAUSE

Upon the affidavit of John F. Costelloe, plaintiff pro se, and upon his Verified Complaint and the material submitted therewith, and upon all the proceedings had herein, it is

ORDERED, that defendant Trans World Airlines, Inc. ("TWA"), or its attorneys show cause on the 7th day of February, 1975, at 11:30 o'clock in the forenoon of that day to this Court in Courtroom 11 at the United States District Courthouse, 225 Cadman Plaza East, Brooklyn, New York, why an order for preliminary injunction should not be granted that defendant TWA comply with requirements of Rule 10b 5 of the Securities Exchange Commission in respect of its tax liabilities, with particular reference to any deduction or other reduction of otherwise taxable income claimed or otherwise availed of for Federal income tax purposes and/or like purpose with respect to its tax liabilities, with particular reference to so-called kickbacks to travel agents and other persons which were illegal as being in excess of amounts allowed by law; and in other respects, particularly as to any account or amount or transaction used to cover up or balance such kickbacks or any related item, including, but not limited to so-called pipeline assets; and that TWA

refrain from action towards or for or effectively looking to consummation of sale or other disposition of aircraft or contract therefore, from TWA to the Government or State or Nation of Iran, except as shown to be permissible under rules and orders and opinions and the like of the Civil Aeronautics Board and any other Agency of Government with jurisdiction (including the United States Department of Justice), and not in violation of any law of the United States against combination in restraint of trade and the like;

ORDERED, that delivery of a copy of this order, and of the papers on which it is granted, addressed to the attention of the TWA Vice President and General Counsel, Raymond R. Fletcher, Jr., at the executive offices of TWA at 605 Third Avenue, New York City, 10016, on or before 3:00 o'clock in the afternoon of February 4, 1974, by any person of mature age, shall be sufficient service of this order.

/s/ Orrin G. Judd
United States District Judge

.Dated: February 4, 1975
Brooklyn, New York

SUPPLEMENTAL AFFIDAVIT

Plaintiff pro se, being duly sworn, deposes and states:

1. Plaintiff is the beneficial owner of shares of TWA Common Stock held in the name of his son, Kevin M. Costelloe. See Verified Complaint, para. 33. Kevin has had no interest or participation in the ownership of the stock or of its yield. Holding in his name is the result of a clerical error in purchase of the stock, thought not worth the trouble in correcting. If need be, the matter could proceed with Kevin substituted or added as plaintiff individually or in derivative capacity. See the account of the decision by Judge Cannella in the Sweet case, p. 1, N. Y. L. J., 2/3/75. This would, however add needless complication without warrant. Fee relations between myself and Kevin would be of no material concern to defendant, under the recent decision of the Court of Appeals commented upon by Bernstein in his recent Law Journal column. Plaintiff has other interests, as creditor and as member of the public entitled to safe transportation by air at appropriate rates set by effective regulatory authority in conjunction with honest and effective airline management.

2. The wrongs of defendant are continuing and compounding. Each day that goes by there are more kickbacks

and increased liabilities for TWA for taxes, interest and penalties. The matter has gone so far that TWA must be utterly insolvent in every sense, and getting more so, with current consequences of changes of creditors' rights rather than diminution of equity of the common stock such as I own. I am a creditor of TWA in the hundreds of thousands of dollars for services rendered quantum meruit with respect to settling with almost complete success on audit of tax returns through 1968, more than \$100,000,000 of tax adjustments asserted by the Internal Revenue Service against TWA. The only items not successfully handled were put into litigation only July 12, last; and experience shows that in normal course more than a decade may pass before final resolution, which on percentages is likely to be in favor of the Government. I am told that the estimate of Chadbourne fee in matter in such posture is at least \$1,000,000. I am, moreover, a member of the public entitled to airline service as stated. Management of TWA as presently constituted does not meet statutory standards. This is clear from the kickback matter itself, and is confirmed by public criticism and officials' resignations and the like in consequence of relations of such management to its supposedly regulatory agencies, rendered largely ineffective even in matters of safety under control of the FAA with a work "force" of

55,000. So weak is FAA that it did not insist on installation of proximity warning devices at cost of less than \$6,000 each which would have prevented the horror of Mount Weather, where, on December 1, last, a TWA airliner crashed the mountain (not indicated on the governing official map) and cut the wires to the current President's nuclear command post although they were buried underground; killing 92 persons in consequence. The collusive and illegal combination here attacked, effected behind the regulatory agencies' back, and sought to be made effective before they can be expected to be aroused from typical torpor, will exacerbate that condition and make wholly unavailable for the indefinite future the transportation to which I am entitled, though the one agency alone, FAA, employs far more than the number of persons employed by any airline in the world; and the amount of actual costs borne by the air traveller is but a small fraction of the total costs, taking into account those borne by the Government.

3. The matter is of desperate urgency. Press reports have it that the deal with Iran had been worked out by TWA a week before the CAB announced permission to restrain combination for a year and a half. On the very next day TWA complained publicly that the permitted restraint of competition was not for five years and on the very same day

made it plain that it had circumvented regulation again by creating a situation, which if jammed through, would make the restraint permanent. Layoffs of pilots and the like are already beginning. Pan Am and TWA have between them about 40 747 aircraft. Sale of 12 to Iran will reduce the fleet of 747 aircraft by almost 1/3. I have a neighbor who flies that aircraft as pilot on standby basis only. This no doubt will mean the end of his flying that aircraft. Force reduction may well cost him his job, with other and younger men taken on by Iran to fly the aircraft--though surely in actual joint Iranian and TWA control. Without TWA or the like to handle the technical aspects of repairs overhauls and scheduling and selling, the Iranian civilian use would be limited and little more than a cruel hoax. Airline pilots unions and other unions have interests. The result may well be strikes and work stoppages. Aircraft will soon be transferred to Iran. With our Government's relations with that Government as they are and with the shrunken combined Pan Am/TWA operation dependent upon foreign oil, especially Iranian oil, transfer of one aircraft must almost surely mean transfer of all others agreed upon, finally or tentatively. And after the transfer, if Iran does run a bona fide world airline, will not oil be shunted to it rather than to the shrunken Pan Am/TWA operation?

4. Purposes of evasion of regulation are plain in broad outlines and also in specifics. It is believed that there are grave questions not only of money but also of safety of human lives in the so-called pipeline matter, involving fungible items such as landing gear, wings and engines, supposedly reworked and kept around the world for use as needed for safe flying. The proposed transfer to Iran no doubt would make ineffective any effort to determine the true state of the accounting in that matter. I have challenged integrity of that accounting before the Internal Revenue Service, and the challenge is being seriously considered.

5. No doubt it is hoped by present TWA management and their advisors that the proposed transfer will freeze out investigation and freeze them into good spots, in or with TWA or Iran. Executives of TWA have on earlier occasion found sumptuous posts with our Arabian friends, e.g., Saudi Arabian Airline.

6. Judge Younger, now of Cornell Law School, said only days ago at State Bar that we live in an age of a new kind of revolution. This one is conducted, not with the guillotine or with the firing squad or the assassin's hammer and sickle, but in Courts. As such it strains lawyers and judges, but as such it probably also is the highest

vindication of our judicial system to this time. In this light this matter may well be regarded as welcome opportunity rather than distasteful duty.

Dated: Centerport, New York
February 4, 1975

MEMORANDUM OF THE HONORABLE ORRIN G. JUDD

Plaintiff has filed a complaint in this court alleging various types of misconduct on behalf of -- on the part of Trans World Airlines (T.W.A.), including improprieties of the sale of 747 airliners to Iran, antitrust violations, misrepresentation of its financial condition, including failure to show tax liabilities which may be inconsistent with its financial solvency and violative of its covenants with debt service, airline kickbacks to travel agents and improper payment to the campaign fund of Congressman Mills, among other things.

Claims federal court jurisdiction under the Securities Act and as beneficial owner of T.W.A. common stock held in the name of his son, and as one who is being "prevented from proper use of airline travel by monopolistic combinations in restraint of trade outside any permissible exception."

Has moved for a preliminary injunction requiring T.W.A. to comply with the requirements of Rule 10-B-5 of the Securities and Exchange Commission in respect of its tax liabilities, and an injunction against consummating the sale or disposition of aircraft to the Government of the State or the Nation of Iran.

Defendants have moved to dismiss the action for failure to state a claim upon which relief can be granted, and in that connection have called attention to circumstances, regardless of the validity of the allegations in the complaint, that may disqualify plaintiff as a proper attorney or party to the action.

It appears without contradiction that plaintiff was a partner of the law firm of Chadbourne, Parke, Whiteside & Wolff from March 1958 to June 1, 1968; that he was a tax consultant for that firm thereafter until December 31, 1971; that the firm has been counsel for many years for Trans World Airlines, Inc., and that plaintiff worked on tax problems for T.W.A. at least until sometime in the year 1970.

The Court has directed that the files be sealed, and has held the hearing on the motion in chambers because of concern both for publicity of the nature of current charges by the defendant against the plaintiff and because of concern with respect to the publicity about any of the matters until they are brought by a proper party.

The Court of Appeals has held that an attorney is disqualified to bring an action against his former client or to represent another party in such an action where it relates to matters in which the attorney previously represented the

client and that "the dynamics of litigation are far too subtle, the attorney's role in that process is far too critical, and the public's interest in the outcome is far too great to leave room for even the slightest doubt concerning the ethical propriety of a lawyer's reputation in a given case."

Emle Industries, Inc. v. Pattentex, Inc., 478 F.2d 562 at 571 (2d Cir. 1973).

In Meyerhofer v. Empire Fire & Marine Insurance Co., 490 F.2d 1190, 1196 (2d Cir. 1974), the Court affirmed an order which prevented a former attorney for a client from acting either as a party or as an attorney for a party in any action arising out of the facts therein described.

Some of the matters involved in the complaint and the application for an injunction have arisen subsequent to Mr. Costelloe's termination of any activity with respect to T.W.A. matters, but the complaint, as a whole, involves the possibility of delving so far into T.W.A. corporate matters and intercorporate and governmental relationships that it would be unseemly to permit him to act either as a party or as an attorney in the action. Although the action is brought pro se, it may even be regarded as action in the interest of his son Kevin Costelloe, who owns the ten shares of T.W.A. stock which are involved with him acting as attorney.

Under the circumstances, the Court finds that Mr. Costelloe is disqualified to bring this action, therefore does not reach the merits of the complaint or of the motion for a preliminary injunction.

This memorandum, together with the rest of the file will remain sealed.

Mr. Costelloe is not forbidden from bringing to the attention of the United States Attorney for the Eastern District or any other Governmental agencies, which he sees fit any of the matters described, subject to the provision of the Code of Professional Responsibility with respect to publicity that might be given to any such step.

Mr. Costelloe is not forbidden from suing T.W.A. or the firm of Chadbourne, Parke, Whiteside & Wolff for any sum of money that he claims is due to him. Any problems that arise in such an action should be considered by the court in which the action may be brought.

Harold L. Warner, Jr., who appeared for the defendant in the action, has suggested that there are aspects of Mr. Costelloe's conduct with respect to T.W.A. that are unprofessional and would justify disciplinary action. The Court makes no determination on that but will give further study to the matter and will also consider any papers which Mr. Costelloe may submit on that subject. Rule 5 of the General

Rules of this Court refers all disciplinary matters to the Chief Judge, who may then refer them to the Bar Association. This Court will consider anything from Mr. Costelloe before determining whether even to bring this matter to the attention of Chief Judge Mishler.

It is therefore ordered that the complaint be dismissed on the basis of disqualification of the plaintiff and that the motion for preliminary injunction be denied as moot, the complaint having been dismissed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JOHN F. COSTELLOE,	:	
Plaintiff, pro se,	:	AFFIDAVIT IN OPPOSITION
-against-	:	TO MOTION FOR
	:	PRELIMINARY INJUNCTION
TRANS WORLD AIRLINES, INC.,	:	AND IN SUPPORT OF CROSS-
	:	MOTION FOR ORDER DIS-
	:	MISSING THE COMPLAINT
Defendant.	:	75-C-157 (OGJ) (Sealed)

-----X

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

RAYMOND R. FLETCHER, JR., being duly sworn,
deposes and says:

1. I am Vice President and General Counsel of defendant Trans World Airlines, Inc. ("TWA"). I make this affidavit in opposition to plaintiff's motion for a preliminary injunction and in support of defendant's cross-motion for an order dismissing the complaint.

2. Because of the nature of this case and the facts I am compelled to call to the Court's attention, I respectfully and most earnestly request that the file in this case be sealed and that fictitious names be employed in the reporting of any decision in this matter.

The Complaint

3. The complaint contains no ad damnum clause. However, plaintiff, alleging that he is the beneficial owner of defendant's common stock "held in the name of his son Kevin Costelloe" (Complaint, ¶33), seeks inter alia

an injunction requiring defendant (a) to state its true financial condition and (b) "to stop further action" in the sale of six of defendant's "747 airliners to Iran for a total price of nearly \$100,000,000" (Complaint, ¶¶11, 38).

4. A temporary injunction "without requirement of bond" is sought and "Demand is also made for such other and further relief, by way of damages, compensatory, punitive, and otherwise and by way of injunctions, in respect of antitrust, SEC and similar matters, including insiders' profits as may be found appropriate on further proceedings" (Complaint, ¶39).

Plaintiff's Efforts to Extort \$750,000 from Defendant

5. From March 1958 until June 1, 1968 plaintiff was a member of the firm of Chadbourne, Parke, Whiteside & Wolff ("the firm"), defendant's counsel. From June 1, 1968 until December 31, 1971 plaintiff was employed as a consultant to the firm under a Consulting Agreement.

6. On or about January 12, 1973 plaintiff attempted to bill defendant in the sum of \$750,000 (Exhibit A attached). Plaintiff's only services on defendant's matters had been rendered either as a partner or consultant of the firm. Defendant had retained the firm, not plaintiff, and there was thus no basis for this billing. Defendant refused to pay this bill.

7. Disappointed in this effort, plaintiff instituted a vicious letter writing campaign against the firm and defendant.

8. How many such letters plaintiff wrote, only plaintiff knows. Many of these letters were addressed

to third persons, including Government officials and heads of regulatory agencies.

9. Examples of this letter writing campaign include:

A. A letter dated April 23, 1974 addressed to the Chairman of the Board of defendant, with a copy to the Chairman of the Civil Aeronautics Board, asking for a loan on sums allegedly owing by the firm to plaintiff (Exhibit B).

B. Letter to the Chairman of the Board of defendant dated October 11, 1974 advising that plaintiff has "been constrained to apprise the Department of Justice that I think there is TWA, Sperry, etc., obstruction of justice." (Exhibit C).

C. Letter to the Chairman of the Board of defendant dated January 6, 1975, including as attachments thereto:

1. Letter from defendant to deponent dated December 22, 1974;

2. Notes JFC situation, 12/23/74;

3. Letter from plaintiff dated December 25, 1974 addressed to 5 partners of the firm, 17 representatives of 5 of the firm's clients, and the Chairman of Citicorp;

4. Letter from defendant to James K. Crimmins, a senior partner of the firm, dated December 29, 1974;

5. Affidavit of plaintiff, dated January 3, 1975 filed in the case of John F. Costelloe, plaintiff, pro se v. Sperry Rand Corporation and Stannard Dunn (one of the firm's partners), U.S.D.C., S.D.N.Y., 74 Civ. 2244 (WCC). (Exhibit D).

Plaintiff's Harassment of Deponent

10. On at least a dozen occasions since TWA refused to pay Costelloe's bill for \$750,000, Costelloe has telephoned me at my office. Costelloe has been incoherent in these conversations and has threatened all sorts of dire consequences to TWA. Whenever I have tried to reason with him he replies "Pay me" and then abruptly terminates the conversation by hanging up the phone.

Plaintiff's Purported Interest as a TWA Stockholder

11. On July 3, 1973 plaintiff's son Kevin purchased 10 shares of defendant's common stock. The high price of such stock on July 3, 1973 was 19-5/8. In his supplemental affidavit of February 4, 1975 plaintiff states as follows:

"Plaintiff is the beneficial owner of shares of TWA common stock held in the name of his son, Kevin M. Costelloe. (See Verified Affidavit, para. 33). Kevin has had no interest or participation in the ownership of the stock or of its yield. Holding in his name is the result of a clerical error in purchase of the stock, thought not worth the trouble in correcting."

Plaintiff and/or his son could have sold the stock at a price of 25-5/8 on October 2, 1973.

12. The completion of the agreed sale by TWA of six used Boeing model 747 aircraft to the Government of Iran is clearly in the best interests of TWA because the airplanes involved are currently surplus to TWA's needs and the proceeds of the sale are needed by TWA in its business. The agreed sale is for cash and the proceeds will be immediately available to TWA upon delivery of the aircraft from time to time in 1975. The Board of Directors of TWA considered and approved the sale of these aircraft to the Government of Iran at its meeting on January 22, 1975.

13. Delivery of the first aircraft is scheduled to take place this month.

14. It is extremely difficult to find a ready, willing and able buyer for used aircraft of any type, including the Boeing model 747. If the agreed sale of six used 747 aircraft to the Government of Iran is for any reason rescinded the possibility that TWA could make a similar sale to another buyer is extremely remote. There exist very few potential buyers with the need and resources suited to the purchase of so large and expensive aircraft. The rescission or delay of this sale would cause irreparable injury to TWA.

/s/ Raymond R. Fletcher, Jr.
Raymond R. Fletcher, Jr.

Sworn to before me this
6th day of February, 1975.

/s/ Maureen Davidson
Notary Public

EXHIBIT A TO AFOREGOING AFFIDAVIT IN OPPOSITION

Raymond Fletcher, Esq.
Vice President and
General Counsel
TWA
605 Third Avenue
New York, New York 10016

January 12, 1973

Dear Ray:

It has been long since we last discussed payment for my services in the very successful negotiation of proposed income adjustments of the TWA returns running to almost \$150,000,000.

I am always willing to meet at any feasible time and place on any reasonable basis, but time has just about run out. Barring some further development, I will soon get service on TWA and Chadbourne.

With kind regards,

Sincerely,

John F. Costelloe

cc: Charles C. Tillinghast
C. E. Meyer

John F. Costelloe
216 Little Neck Road
Centerport, New York 11721

January 12, 1973

For professional services rendered,
quantum meruit including disbursements,
in full, to date

\$750,000

EXHIBIT B TO AFOREGOING AFFIDAVIT IN OPPOSITION

April 23, 1974

Mr. Charles C. Tillinghast
Chairman of the Board
TWA
605 Third Avenue
New York, New York 10016

Dear Chairman Tillinghast:

You're in the people business and the way our planes are dropping overseas one would think that more time would be spent on that.

Chadbourn has some foolish notion that by wreaking harm on my family and myself they can get me to shirk my duties as a citizen.

The two are entirely independent.

It would, however, be good for all to take out the Chadbourne coercion at least for a while. What will you lend me on a minimum of \$60,000 in fees already collected for my account by Chadbourne but held back for purposes stated? Name any figure or discount, but name something or I'll put TWA down as zero offering.

Are the public entitled to observe on the Pan Am negotiations for squeezing the public on service? A real tax, if ever there was one, ought to be so observed.

For myself I have trouble seeing what Pan Am has to offer: poor management, tired pilots, insolvency and planes that drop every couple of months, by means including the Parkinsonian pilot. No comment on any lawyer.

Sincerely,

John F. Costelloe

cc: Messrs. Rowe, Seawell, Timm

EXHIBIT C TO AFOREGOING AFFIDAVIT IN OPPOSITION

October 11, 1974

Mr. Charles C. Tillinghast
Chairman of the Board
TWA
605 Third Avenue
New York, New York 10016

Dear Mr. Tillinghast:

I write to you as head of a member of SCHTAAG, an ongoing effort to gag me in all courts for all times.

SCHTAAG is the acronym for Sperry, Chadbourne, TWA, American Brands, Anaconda and Gulbenkian Foundation of Lisbon.

Your Fletcher won't talk to me or answer letters. Nor will Chadbourne.

Now a Long Island lawyer, brother-in-law of Warner of Chadbourne, seems bent on spreading on the records of Supreme Court in Riverhead what Warner got sealed in District Court on Foley Square in a case still under active consideration.

The situation has undergone important changes. One is that I have been constrained to apprise the Department of Justice that I think there is TWA, Sperry, etc., obstruction of justice. You may have seen the reference to that subject

by Assistant Attorney General Kauper in the recently issued State Bar Report.

I have been constrained also to apprise administrative officials of what goes on.

I am in process of further communications of the sort, including submission of data to Congressional bodies for their consideration including fiscal integrity and human lives.

I would be pleased to discuss these matters with you. I had sought to discuss them with Fletcher and Chadbourne and the Long Island lawyer, Ingraham.

Some of the problems are indicated in the enclosed copy of letter to Ingraham. You will see that reference is made to Warner's suggestion that Chadbourne refuse to pay me the \$100,000 or so it has owed for years unless I will get involved in the complex of matters which SCHTAAG puts together and presses. I wouldn't know how to take them apart, and surely could not in conscience become implicated in the mass. So many laws and transgressions and official bodies are involved that I just wouldn't know how to deal with them as such without getting into something that I have been at pains at any cost not to be implicated in as to any part, much less in sadly sinful symbiosis.

I left Chadbourne in protest of Dunn's insistence on being both a Chadbourne senior partner and an employee of Sperry for coverage under its otherwise qualified employee plans. Events have vindicated me, not the least the nature and actions of SCHTAAG as alternative to simple profession of rectitude if that could have been made. As it is, TWA, in addition to its other difficulties, is involved in that Sperry matter, admittedly involving serious tax and SEC and financial aspects of questionable deductions in the hundreds of millions.

The SCHTAAG attack mounted by Chadbourne involved accusing me of extorting TWA. I was only asking for a loan on money which had been paid by TWA for me years earlier, on TWA terms. Chadbourne falsified dates and other data with what must have been desperate abandon, still uncorrected. Of course I had asked TWA to be paid for adjusting with almost complete success \$150,000,000 of income adjustments seriously proposed on audit. And I had expressed concern at the reports of payments of Riddell to Mills which I discovered so belatedly and to my complete surprise. And I had been concerned as father of a stockholder for the Taylor/Timm sojourn to Lisbon just after the first rightist regime fell, and for the flagrant kickback scandals with serious tax and SEC implications. And it did seem to me that \$300,000

for you and \$70,000 or so for pilots was a bit generous for a company that couldn't make ends meet. This was hardly extortion, however. If there was or is extortion it is of not by me.

Sperry seems to be in a dilemma as to how to treat Dunn, Director newly reelected, member of Executive and Audit Committees, and senior partner of Chadbourne for many years, and recent retiree for pension purposes, in its post-stockholder meeting report. That problem exists whatever I do or whatever you or TWA or SCHTAAG does to me or to my family.

I would think, that after your misplaced trusts in Timm, your recalled letter to Congress, your desperate condition with the banks (perhaps worse actually than that of Pan Am), you would have enough to do without keeping TWA on course to keep me out of all courts for all times in all matters concerning TWA since March of 1958. If you can't stand processes of justice in our traditions, how can your private ticket and asset accounting be trusted; how, your legislative protestations; how, your administrative ploys with Timm, etc.? Aren't you in enough of a bind with Transportation throwing time and money at this? How can you justify continued coercion of a helpless individual through Chadbourne's threats?

And do read the enclosed to Ingraham, keeping in mind that TWA's deductions for business expenses are limited to the ordinary and necessary. Won't it be hard enough to cope with kickbacks without adding costs of coercing of Costelloe? Bear in mind the Gallilean principle of proportion and the teachings of stance in Playgirl and of hues and cries in Hughes.

Sincerely,

John F. Costelloe

cc: Members of SCHTAAG

Encl.

EXHIBIT D TO AFOREGOING AFFIDAVIT IN OPPOSITION

January 6, 1975

Mr. Charles C. Tillinghast
Chairman of the Board
Trans World Airlines
605 Third Avenue
New York, New York 10016

Dear Mr. Tillinghast:

Events of January first merit your most careful consideration. There were, inter alia, the Watergate convictions, the Ashland matter with Mills, and the reports of the 3M SEC filing in recognition of the civil and criminal consequences of its slush fund.

You and your personal advisors may see ominous bearings on your personal fortune and freedom.

On December first, TWA crashed Mount Weather, cutting the lines to the President's nuclear-attack center and killing 92 for want of a \$10,000 warning device. Butterfield had acknowledged the possibility of loss of life but had been reluctant to require the expenditure. This, while, as we now know, the airlines were kicking back hundreds of millions to travel agents and others.

On December 10, in two memoranda and one letter, the District Court, in response to the urgings of Warner of

Chadbourn for SCHTAAG, held that Sperry's principal place of business was in New York City because there were vice presidents there in circumstances which would negate diversity jurisdiction for TWA in litigation with New York adversaries growing out of the Mount Weather disaster. TWA had fought hard for the contrary position established in the litigation of the Brooklyn disaster which took the life of my neighbor, Wollam, and cost his widow years of anguish in controversy.

On December 13, your Fletcher acknowledged TWA responsibility for SCHTAAG. See the copy of my letter to him of December 22, enclosed.

The December 16 issue of Aviation Weekly reported the proposed legislation linking tickets and taxes to curb kickbacks as I had suggested to Justice and CAB in a meeting held the day President Nixon announced his resignation.

On December 20, I initiated further consideration of the order of the 10th which seemed, inter alia, not to reflect awareness of the possible bearing of the December first Mount Weather disaster. I urged that the Court expressly reject the SCHTAAG effort to have me suppressed.

On December 21, press reports of kickback confessions in the grand jury matters seriously implicated TWA.

My former partner, Spater, had complained that kick-backs far overshadowed his own guilt in paying over laundered American Airlines cash to CREEP. The other side of that diversion was false foreign invoicing. It cost Spater conviction and his job. American Airlines paid \$175,000 for his legal fees. Under the 3M settlement announced January 1, he would be liable for those fees. Bear that in mind as you enter this new phase of your life.

The dollar amounts in the kickback matter are much larger. They are no less reprehensible or more deductible. And I never heard of death for 92 on Mount Weather as the other side of a political contribution per se.

The 3M SEC filing reported January 1 showed that diversion of even relatively small amounts to a slush fund has enormous consequences for all, requiring SEC disclosure. That is the position I recognized in suing Sperry after Chadbourne had conceded that there was no defense for Dunn's passing as Sperry employee for qualified plan purposes while a full Senior at Chadbourne, with Chadbourne bills written down to create purported salary for Dunn and then grossed up to meet firm needs.

I raised questions of TWA accounting integrity and related questions of safety of human lives in context of the

tragic days of 1974 following the March horror of 346 lost at Paris for want of an actual retrofit of a cargo door duly recorded but not made.

The response for TWA on December 30 was reiteration of the initial SCHTAAG effort. Warner of Chadbourne then said:

"* * * There is no basis for the orders sought by plaintiff's motion of December 20 and none is advanced."

I had moved for:

"5. Ruling on standing of any of parties to SCHTAAG who are not defendants, i.e., Chadbourne, Parke, White-side & Wolff, American Brands, The Anaconda Company, Trans World Airlines, and Gulbenkian Foundation of Lisbon.

6. Ruling denying action demanded by and for SCHTAAG, e.g., putting me out of all Courts for all times, as alleged vicious extortionist with personal vendetta in paranoiac fear of harm to livelihood."

The December 30 response showed gross insensitivity to tragedy that had gone before and to unfolding drama made final in public January 1 and following.

That response constitutes renewal of the TWA accusations against me in June for sending letters such as that to Under Secretary Binder included in my affidavit of January 3, copy enclosed. See that affidavit, paragraphs 69-70.

I complained of kickbacks. Kickbacks are now confessed.

I complained of pipeline matters as presenting special safety problems in light of the March disaster near Paris

because a door certified as refitted had not been. In April, we now know, the Government had for tax purposes put pipeline assets into contest involving nearly \$20,000,000 in all. TWA sued on that in Tax Court in July. Questions ought to be answered sooner than in normal course of tax litigation.

I complained of overpaid management who refused to provide safety equipment needed. We have suffered Mount Weather. Butterfield had anticipated that. He has reversed himself.

I complained of matters of public confidence. Only after Mount Weather did we learn from the House Subcommittee of the suppression of the highly critical FAA report in the Paris disaster. Suppression was to prevent use by survivors in litigation. Suppression became not feasible in the storm after Mount Weather.

I complained of infection by airlines of their regulators, including the FAA. Timm had been taken by Taylor to Lisbon, etc., in April. You were soon off to Bermuda with Timm and McGregor, he of CREEP, in circumstances of such scandal that Timm will not again be Chairman. The FAA, 55,000 of them, are rendered useless or worse. The public were led to rely on what was not there. Brinegar is out.

Butterfield is on his way. Staggers, too, has been shown to have been rightly concerned, as conceded now, even by Butterfield.

I complained of interference in tax rulings matters. Mills is now in open disgrace. He does have newly acquired benefit of a relatively short period of limitations, effective midnight, December 31, 1974.

I was deeply concerned in anticipation of the 3M sort.

I had been apprised in April that Chadbourne could not offer justification for Dunn's passing as Sperry employee for retirement plan purposes while a Chadbourne Senior. I sued Sperry and Dunn in hope of clarification.

TWA for you took the occasion to try to implicate me in its terrors. It said, in current stance of participant not party, that what I did was in "personal vendetta." What of the dead and what of the confessions in kickbacks; and what came of CREEP? Do you not regret that warnings were not heeded to enable the pilot and the 91 others to escape Mount Weather? How many more must die?

You said that my actions were "vicious." Compare the perversion of our fiscal system in the hundreds of millions by false ticket currency, often more demanding on resources than valid dollar currency. Who got the diverted funds? Is

destruction of the effectiveness of regulatory bodies not vicious?

Are pipeline assets more real than salad oil? See my discussion draft for Trager of 12/25/74, copy enclosed.

Are not the TWA financials hopelessly skewed, even compared to 3M and Sperry? See my notes of 12/23/74, and my affidavit of 1/3/75, copy attached.

You said that I alone was a threat to the combined forces of SCHTAAG. Was it not they who combined against me? What did you have to fear except truth? Is it not sordid to have Chadbourne withhold even pension benefits and collected fees for work I did as a partner to try to implicate me?

If Sperry did right, why didn't it just say so? Did it need you? Did you need it? Could not either one stand on its own deeds? If Sperry did wrong, why did not it long since so acknowledge, as has 3M?

Yet on December 30, with all the new knowledge gained since the mad days of March and the ebullience of Spring and the collapse of CREEP, SCHTAAG, creature of TWA, renews its June challenge.

As my affidavit of January 3, 1975, pages 23-24, paragraphs 100-103, stated:

"100. If TWA wants to litigate with me, it should sue me or become a party to this suit or at least give up covert stance as dominant participant here in effort by falsehood and deception to prevent me from litigating on anything like conventionally equal terms.

101. Court's good offices and my time have been wasted by the essentially deceptive and oppressive posture of TWA in the matter. I doubt that others of SCHTAAG than Chadbourne were fully aware of the dominant role of TWA as it first became known December 13.

102. It is ironic that in proceedings where I would not be granted evidentiary hearing, and indeed have not been, TWA sought to have me barred in all cases without any hearing as to what would be involved. (My suing it in regular course would thus be characterized as insufferable and incurable injury; its proceeding against me in oppressive and covert course is the pattern it has chosen for itself to escape fair trial.)

103. Gulbenkian should be made to speak for itself if only to help judge what to do about Chadbourne for its conduct as purported counsel and to provide, if need be, confirmation of the wisdom of respecting standards governing professional representation and conduct."

My son, stockholder of TWA, and I, stockholder of Sperry, deserve better. So does the public.

You cannot cure what you have done but you can stop doing it. I don't ask that you tell Chadbourne to do anything but observe canons of professional ethics. I don't ask you to tell it to pay what it owes me. See letter to Crimmins of 12/29/74, copy enclosed. I do ask that you not pay Chadbourne for the likes of SCHTAAG, or, alternatively, go piggyback on Sperry. Do stop any thought of having

Chadbourne implicate me in the TWA terrors or in any rendezvous with the SEC.

Your effort at secrecy by surprise has backfired. It is just another instance where your gangs can't shoot straight.

This whole tragic mess is out of my hands except as a private citizen with nothing to hide and no desire but to serve his country and save his family and his deserved reputation.

You have interests of your own. It is unthinkable that as the banks and the Government come into new awareness of you in true light you will linger longer at TWA than Spater did at American. Tend to your interests, and let me tend to mine.

Copies of this are going to Government and Directors in due course. My sufferings and service in candor and forbearance in suit have discharged me, I think, of any public obligation but requested cooperation. I propose to institute action to stop SCHTAAG and start recovery unless you and your personal and such other advisors as you may properly invoke may suggest otherwise.

Sincerely,

John F. Costelloe

cc: Messrs. Lyet, Smart & Webb

EXHIBIT D TO AFOREGOING AFFIDAVIT IN OPPOSITION

December 22, 1975

Raymond Fletcher, Esq.
Vice President & General Counsel
Trans World Airlines, Inc.
605 Third Avenue
New York, New York 10016

Dear Ray:

It has been a busy time recently. You have had your grand jury and I have had your SCHTAAG. There, TWA, with American Brands and Anaconda and Gulbenkian, banded together to put wagons out against me. Sperry and Dunn were parties, but the others of SCHTAAG seem not to be. It doesn't seem likely that for all the secrecy and calumny any Court is going to issue an order without showing of grievance or jurisdiction, for benefit of persons not parties. Maybe they teach that procedure in the law school where they teach about going after poor Playgirl. I used to hear that blessed are the meek is a good one. I wonder whether, if you had spent more time for TWA and less against me, you and Chadbourne might not have been able to get up at least one statement of your problem satisfactory even to the CAB.

Ask Warner of Chadbourne about the papers of Friday the 20th.

They reflect your advice, for the first time, in our telephone talk on Friday the 13th, that SCHTAAG was created, mounted and used with your active support on behalf of TWA.

Saturday, the 21st, the cool clean hands of Brooklyn joined in happy confluence for human lives with the wonderful ones from Washington.

Now I consider myself free to counter what you have been doing. That seemed to show some want of proportion. Granted, groups gain cohesion in ostracism, but didn't your group merit someone greater than I? And what did I ever do to TWA?

I handled income adjustments of about \$150,000,000 in all on audit with almost complete success. To be sure, I couldn't prove that there were assets in pipeline for which there were no adequate records. Nor has Chadbourne; and it will be interesting to see how the proceedings begun July 12 come out. They will not involve, I hope, more than money. Even money can be difficult. Recall Hughes? I recall the 17 years RCA spent in the wilderness with the Government. Mr. Wriston must be interested.

What really bothers me is that the pipeline matter may involve, for all I could find, something of the order of the paper fix in the real TriStar that cost 350 lives for its

bad cargo door. The recent customs proceedings are not reassuring in context of my experience. Nor is the disaster at Mount Weather.

Could it be that the doings of Dunn, the Senior Partner who doubles as Sperry employee, have analogues among SCHTAAG? Why else would they join in attack? You have acknowledged, but Dick Steinmetz disclaimed awareness except as gotten from me. Chadoburne sought to establish irresponsibility for Gulbenkian; but they stand silent, perhaps in bewilderment of what goes on over here. Brands stands mute in murky silence.

I haven't been paid for my audit work; and I have been long-suffering and become poor (though not in spirit) while inquiring about the pressure on the Service in leasing; now seen in sad light reflected from Tidal Basin. I have been concerned about kickbacks. My son is a stockholder and that sort of illegal payment can't be tax deductible. Ergo, possibly bad financials, National Student Marketing and so on. Is this what got SCHTAAG going? If so, the sooner halted the better for all. Ask Warner about Meyerhofer.

Anyway I am free to invoke the clear light of the forum after so many months playing Christian in the dark.

With kind regards, for all your obstruction of justice.

Sincerely,

John F. Costelloe

EXHIBIT D TO AFOREGOING AFFIDAVIT IN OPPOSITION

NOTES: JFC SITUATION 12/23/74

Chadbourne made me pay tax on 1974 receipt. 1974 income low. Chadbourne easily pay before 12/31. No concession letter.

Situation changed past week or so.

13th, Friday, Steinmetz disowned SCHTAAG but Fletcher admitted TWA participation.

15th, Aviation Weekly story re kickback legislation, tie tax to tickets.

19th, City Bank, earlier quiet re kickbacks, etc., demands payment 20th or else.

20th, I advise Court of abuses re seal and my proposal to take narrow view and appeal.

21st, grand jury story breaks sooner than TWA hoped. CREEP kaput. Timm down. Brinegar out. Mills fiasco to get to hospital before pokey re Riddell & milk? Kickbacks not deductible. Government claim in pipeline action?

Making punishment fit crimes over months ahead on Ides of April as crashes go on. Terrible at Mt. Weather for want of \$10,000 to pay Tilly \$300,000.

Financials skewed a la Sperry? That germ of SCHTAAG?

Departure of DePalma. Old-timers arrive. Bankers?
Chase decent about loan after explained withheld fees.
Query City Bank.

10b 5? Antitrust? Contract? Me? Gee? Children?
Assignees? Gee/Paul speak Ingraham if they can reach him.
Not I.

Chapter XI assignment ultimate refuge as SCHTAAG grinds
me down. Speak banks first? Levi? Cunningham, etc.?
Alexander?

EXHIBIT D TO AFOREGOING AFFIDAVIT IN OPPOSITION

December 25, 1975

To: SCHTAAG:

Sperry, Chadbourne, TWA, American Brands, Anaconda
& Gulbenkian

Messrs:

Crimmins
Degenhardt
Denton
Dunn
Fletcher
Geary
Ingraham
Hetsko
Huston
Lauren
Lyet
Meyer
Perdigao
Place
Probst
Quigley
Smart
Steinmetz
Tillinghast
Warner
Whishaw
Wilcox
Wiser
Wriston

Events of the past week or so have had me in communications with some of you. They require that United States Attorney Trager be apprised. I ask your early attention for consideration for inclusion in revision of the enclosure for

him. Whatever you send to me I will do my best to reflect fairly in revision. Of course you are free to respond directly to him, with or without notice to me. Or not at all. We are all but citizens in difficult times.

With best wishes for even better than any of us deserves,

Sincerely,

John F. Costelloe
516 261-5235

ATTACHMENT TO AFOREGOING JFC NOTES

JFC DISCUSSION DRAFT 12/25/74

Dear Mr. Trager:

It is good to see your grand juries moving against airline kickbacks. In fitting punishment there must be criminal sanctions for individuals. TWA management have flouted laws for protection of human lives and have destroyed public confidence in a vital industry and in our laws and technology.

The day President Nixon resigned, I met with members of your staff and of the staff of the CAB. I commented on weaknesses of a system which lets many private persons generate enormous amounts of airline ticketing which in many ways and places is better currency than dollars. My former partner, Spater, of American Airlines, had complained just after the last Presidential election that the laundered contribution to that under his management was slight by comparison to the kickback evil.

When airlines get much less for tickets than allowed by law, in consequence of kickbacks, too much has been allowed

or safety or service has suffered or airlines suffer financially. The ultimate payout may be of enormous evil. The public believe that some of all occurred and no doubt it did. Diversion must be at root of financial troubles which have \$300,000-a-year Tillinghast pleading for subsidy on Chadbourne-drawn petitions which the CAB has found time after time to be inadequate even as such. It's a poor beggar that can't state a case.

Congress has mandated honesty in airline management. That mandate is for you to implement. Present TWA management must go. Where Delta pilots get \$100,000 and United's decline \$80,000, honest airline management is imperative.

Diversion is known. There are few secrets among airline accounting staffs and travel agents and pilots by the thousands. Where are the auditors of the lawyers? Compare Equity Funding, Home Stake, National Student Marketing and even McKesson Robbins.

There must be resolution of who gets what. The skim does not stop with the agents. The torrent of hot money must be traced wherever it goes. It seems to have gone almost everywhere evil. There must be corresponding disallowances of claimed deductions. That means more taxes and in all likelihood false financials for SEC purposes. Public

tolerance will not negate private litigation. My son is a stockholder of TWA, and I its victim.

The factory recorded the paper fix that let the DC 10 drop with 350 outside Paris. Were the repairs aboard on which TWA paid customs duty also paper though certified by CAB? Why did not Tillinghast, \$300,000 a year man, see need for \$10,000 of warning gear that would have saved 92 lives and a direct hit on the lines of the Presidential hideaway at Mount Weather?

In spot check at Kennedy just after Spater complained of far worse than he, TWA was twice as bad as the next worse, Olympia; and that was many times as bad as Pan Am. Is Pan Am to suffer cumulative harm of the sort with no more sanction for TWA than payment of a small fraction of amounts diverted each day? With the same old management prone to do the same old things?

Public records show that Riddell, a Washington lawyer, paid Mills \$50,000 and more. CAB public records show earlier payment by TWA to Riddell of \$50,000. I learned late that Riddell had interfered in a TWA tax ruling in leased aircraft of great difficulty. I asked TWA about that.

I had settled almost all of \$150,000,000 of income adjustments asserted against TWA with great success. I could not settle a "pipeline" matter. The pipeline is the

repository of spares such as reworked landing gear and lifting surfaces supposedly kept around the world for use as needed. I could not get proof of existence of those assets. Nor could Chadbourne, which began Tax Court litigation in July with potential of about \$20,000,000 for or against TWA.

Pipeline assets are about as fungible moveable and proveable as salad oil. If the assets in pipeline are pipedream lives may be lost in the time it takes to prove that.

Taylor and Tillinghast went flying about with Timm before President Nixon resigned, perhaps only in friendship.

In all this the public may believe that money is the other side of such friendship and of non-existent pipeline assets.

The day Nixon resigned the CAB man said that certified foreign repairs. He could not explain the paper factory fix of the DC 10 that dropped 350, and expressed concern. I suggested that Government link taxes and tickets, and Aviation Weekly has just reported proposed legislation that way. I will offer to testify at hearings.

I had left my law firm, Chadbourne, in protest of insistence of Senior Partner Dunn on being that and Sperry employee too for retirement plan purposes. When I learned of the airline problems thereafter I raised them, too.

Chadbourne held back, and holds back, payments of my share of fees earned while a partner, unless I become implicated in TWA matters and those of Sperry. I did and do decline, though at cost of financial ruin.

To break impasse I sued Sperry and Dunn. Chadbourne for SCHTAAG (Sperry, Chadbourne, TWA, American Brands, Anaconda and Gulbenkian Foundation of Portugal) demanded that, without notice or hearing, I be banned from all Courts for all times. The Court declined.

Friday, December 13, TWA affirmed participation in SCHTAAG and Anaconda denied it. Sperry is undoubtedly active. On the 15th Aviation Weekly had its kickback story. On the 20th I filed Court papers reflecting these developments. On the 21st the Times reported your grand juries's activities. The WSJ followed next Monday.

I maintain that SCHTAAG has obstructed justice. It still does. TWA is the principal.

I am at your service.

Respectfully submitted,

John F. Costelloe

12/29/74

John F. Castelloe
Dear Jim:

Ingraham offered no prospect of action by him when Gee finally did reach him. I doubt that he could cope with developments indicated by the current Journal of Taxation (p. 8):

In the traditional Service business * * * it dealt with one party--the taxpayer. The Internal Revenue Service was not interested in who owed money to whom, unless someone owed money to the United States. Now, suddenly, an agency with that background is told that it must * * * force employers to contribute money not to the Government but to a private trust fund, and so on. * * * Of course, there is a new structure in the Service. * * * A new Tax Court procedure is created in which private claimants may seek declaratory judgments (unheard of before * * *

I had urged that we deal with this one matter as such. I had hoped not to make the Service and the Tax Court a showplace for SCHTAAG or even to involve Sperry in comparison of comment on two pensions for Dunn and none for me.

I am apprising the Regional Counsel of my views on the pipeline problems and deductions for kickbacks. The Government is entitled to true records and ought not have to sift the true from the venal. Tax litigation is not equipped to chase cash around the world.

The Government has concern for obstruction of processes of justice.

Chadbourn has time and again offered to pay me what it owes if I will be implicated in the TWA and Sperry matters. Let us forget that now. Let Chadbourn look to its own obligations without any client or threat as shield hostage or cohort.

My share of profits under the firm agreements was 3.65%. I believe I was not paid at that rate. And I doubt the integrity of the profit figure on which any percentage was applied. My demands for accounting have been refused.

I have not been paid even at hourly rate for work done. Much less quantum meruit, especially in the TWA and Gulbenkian matters.

It was agreed in writing that I would be an employee and be included as such in the retirement plan. I performed fully. Years later you came up with a fresh Wilcox memorandum. Compare its discourse to the situation of Dunn. Consider the obligation to fulfill promise out of plan if not in. That is commonplace.

The payout of accounted for firm profits was to have been completed long since, the withdrawal agreement having been broken by holding back payments and other means, including those noted.

Centerport, New York

LITTLE NECK ROAD

11721 516 261 5235

Nothing could get me involved in the unfolding TWA tragedy even when, in April, management seemed secure in reliance on CREEP. My letters are now clearly seen to have been justified, temperate and necessary.

If only Binder and Brinegar and Tillinghast had faced the facts and staunch the flow of money to kickbacks. That would have allowed for the warning devices. I did what I could as such and will continue.

Have a good New Year, and do pray that there be no more crashes.

Sincerely,

A handwritten signature, possibly reading "J. L.", is written in dark ink. The signature is stylized, with a long, sweeping horizontal stroke followed by a vertical stroke and a small loop.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN F. COSTELLOE,

Plaintiff, pro se.

AFFIDAVIT IN RESPONSE TO
AFFIDAVITS OF 12/30/74

v.

SPERRY RAND CORPORATION and
STANDARD DUNN,

74 Civ. 2244 (WCC)
(Sealed)

Defendants.

JOHN F. COSTELLOE, being duly sworn, deposes and says:

PRINCIPAL PLACE OF BUSINESS

1. If the affidavits are responsible action by qualified advocate, they show, in themselves, that the order of December 10 must be corrected, and they rule out need for evidentiary hearing on principal place of business.

2. Chadbourne, Parke, Whiteside & Wolff ("Chadbourne"), by its memorandum of November 27, with Harold L. Warner, Jr., ("Warner") and Donald I. Strauber ("Strauber") of counsel, told the Court that Sperry Rand Corporation ("Sperry") had only five vice presidents. There was no accompanying affidavit.

3. I objected to untrue unsworn testimony.

4. The affidavits bear date of December 30. There was no accompanying memorandum.

5. One affidavit is by Warner, " * * * attorney for the defendants * * *."

6. The other affidavit is by John A. Huston ("Huston"),
" * * * Vice President - Law of Sperry Rand Corporation
* * *".

7. In a case of disputed fact, as this surely is, it is not customary to submit testimony by memorandum of a firm without affidavit of anyone. Nor is it proper without special necessity for the advocate to generate evidence as witness. Nor is it proper for the advocate to represent conflicting interests in litigation. I continue challenges on these grounds, as discussed under a later heading.

8. By Warner's affidavit, the Chadbourne memorandum becomes "my memorandum". This may suggest misgiving of one or more other than Warner. Warner uses Huston as the base for what Warner swears, but Huston does not swear as Warner does. Huston's affidavit for the most part has form and substance of a memorandum. No memorandum accompanies the affidavits. Rather, the Warner affidavit purports to support the unsworn evidence of the earlier Chadbourne memorandum.

9. Warner's affidavit refers to the statement of:

"* * * my memorandum * * * 'four of the five Vice Presidents all have offices at Sperry's executive offices' /at Sixth Avenue/ * * *."

10. Warner's affidavit goes on:

"As evidenced by the attached affidavit of * * * Huston * * * the foregoing statement in my memorandum of November 27 is true and correct and I am not guilty * * *."

11. I will not digress to discuss the "not guilty plea."

12. I strongly contest the assertion that Warner makes under oath that the Chadbourne memorandum is "true and correct" in its unsworn statement that Sperry had only
 "* * * five Vice Presidents * * *."

13. Huston's affidavit concedes my showing, on published data, of some 60 vice presidents, plus executive vice presidents, plus Division Presidents. Division Presidents and vice presidents are the ones with:

"* * * operating responsibility for developing, manufacturing, and marketing Sperry products developed world-wide."

This contrasts them with the corporate and staff executives, whose role is to:

"* * * plan and coordinate * * *."

The "corporate" people are the ones to lobby and provide appropriate relations with the public and to deal with bankers and stockholders such as I. At the time this action started, there were but two corporate vice presidents: Huston, law; and Alfred J. Moccia ("Moccia") finance. They do not make or sell anything.

Huston rightly says also that:

"* * * There is * * * no basis whatever for equating divisional vice presidents * * * with corporate vice presidents * * *."

14. My whole point is that they do different things and so do not equate. The Division Management, through World Headquarters, runs the business day by day. Huston does things like this.

15. Huston is also plainly wrong in swearing that I sought to do the "equating" which both of us reject.

16. The fact is that there is no way to make the operating executives inoperative for jurisdictional purposes except by fiction, fantasy or falsehood.

17. Huston's affidavit turns from misstatement of fact to argument of a sort suitable for a memorandum except that it flouts law. He urges that the Board of Directors elected officers in New York at the end of July. Such elections normally are held away from New York; and it makes no difference where they are held, as shown by Leve v. General Motors, 246 F.Supp. 761 (1965); Kelly v. U. S. Steel, 284, F.2d 850 (1960) and Wood v. United Air Lines, Inc., 216 F.Supp. 340 (1963). The Courts look for factors more stable than choice of place of a meeting in late July, when New York is not notably salubrious.

18. Huston urges that numerous Assistant Secretaries and Assistant Treasurers were also elected. They had not been heard of before this; and nobody has suggested that they help operate the business. They are among the clerical types who make up the ranks of the 2,000 force at Blue Bell of which my affidavits treat.

19. Huston urges that some are elected by the Board and some come to power by other means. That so many Assistants are elected at one meeting held just after the Stockholder's Meeting indicates that election there is only pro forma. The real work is done in Committees, Executive, Audit, and the like. This is true of TWA, G. M. and U. S. Steel; and must be true of Sperry or we would have heard differently.

20. Huston dwells on one provision of the corporate papers but does nothing to dispel the negative pregnant in his selection that other provisions must be considered to

get any reliable meaning out of that one. Surely no authority has given any weight to the formality by which operating management come to power. That the operating vice presidents evidently do so without getting action of the Board which elects Assistants may say something of the Board in relation to Blue Bell. And, over all, is the datum, from Derry & Peek to 10b 5, that the worst lie is the half truth. It behooves him who swears to some to swear to all needed to prevent that sworn from being misleading.

21. Jurisdiction is the responsibility of the Court. Even collusion cannot create or negate it. Nor can mistake or ineptitude or actions of counsel which are not responsible. Anyone can challenge jurisdiction any time. Years of work of court and counsel can thus be lost, too late for alternative action. TWA spent some \$20,000,000 and a dozen years against Hughes only to have the effort collapse for want of jurisdiction. That would be most unfortunate here.

22. Affidavits in usual and due form are adequate only when the parties and the Court so regard them; or when the Court finds refusal so to regard them not justified.

23. Jurisdictional matters can be especially hard for the smaller litigant. He usually must rely on appearances and precedent. If he goes to State Court he may be told he should be in Federal Court. If he goes to Federal Court he may be told he should be in State Court. If he goes to both pending resolution of which one he should be in, especially where different participants are differently situated, he may be told that he should be in neither one. Large firms

and causes often escape this sort of trial by attrition. With their resources of unpublished precedent the large firms present formidable problems of equality in representation.

24. Sperry and the others of SCHTAAG ought not prevail without letting the Court know what they know about what has been held in their experience as to where their principal places of businesses are. Such a determination, once properly made, should normally be followed in other cases, without taking up the time of the Court in redundant and wasteful proceedings.

25. This Court has six times addressed itself to diversity concerning Sperry without a word of sworn testimony from any of SCHTAAG.

26. Assuming responsibility of advocacy, this should not go on any longer. The case should proceed to the merits. There is demonstration of the validity of my constant belief that Sperry cannot make a case on the facts. Its own experience presumably is contrary to its assertion here that nothing in Blue Bell in the past decade and a half or so is significant.

27. Assuming irresponsibility, as I maintain, the Court may well consider that Sperry, for all it has done, is entitled to have responsible counsel state a case for proceeding as such counsel sees fit. However this may be, I maintain that the decision against diversity now requires correction.

92.

RECENT EVENTS REQUIRE FURTHER CONSIDERATION
FOR PURPOSES OF PASSING ON THE MOTIONS
FOR CORRECTION, DISQUALIFICATION,
UNSEALING OF THE FILE, ETC.

28. My handling of this matter has been determined in part by concern for possible risk of asserted implication in misconduct under the tax laws and consequently under the Securities Acts. I have been concerned both for Sperry and for TWA.

29. Recent developments indicate that both require immediate consideration on facts and developments as late as January 2, 1975.

30. On that date there were published in the Wall Street Journal, data on disposition of similar problems of Minnesota Mining and Manufacturing Company ("MMM"), growing out of events bearing especially close resemblance to those in the background of TWA.

31. Very briefly, from that account and from the earlier account in the New York Times, MMM diverted funds from normal course; covered the diversion by creation of false asset and cost accounts; and disbursed over \$500,000 of corporate funds so diverted for political purposes over a period of about 6 years.

32. Diverted funds may not be taken into account in reduction of otherwise taxable income. Deductions claimed to the contrary constitute tax fraud. Tax fraud draws fraud penalty on the entire deficiency. Thus it is that diversion of \$500,000 costs MMM as much as \$10,000,000. This requires

amendment of SEC documents. It incurs possible criminal penalties on officers. Officers are liable for damage to the corporation.

33. On January 1, 1975, the Watergate jury convicted 4 of 5 for coverup of misdeeds.

34. Only recently did the Internal Revenue Service, at top levels, undertake study of the tax consequences of Dunn's passing as Sperry employee, with Chadbourne bills reduced to create a fictitious salary, followed by gross-up for firm purposes. As late as April, it was at long last conceded by Chadbourne that there was no known justification. Sperry had had fair warning from before the time I quit the firm in protest in 1968. There was abundant chance to correct before Dunn "retired" after issuance of the 1969 and 1970 Revenue Rulings on the subject.

35. If Dunn's doings caused disqualification of the Sperry plan with anything like normal consequences, Sperry's tax liabilities and SEC statements must be far worse askew than MMM's.

36. The role of TWA was shadowy until December 13, a Friday. That day, three days after the day this Court wrote thrice in this matter, TWA Vice President and General Counsel, Raymond Fletcher ("Fletcher"), acknowledged to me that TWA had from the very start participated in the effort which I have come to designate by the acronym SCHTAAG. TWA knew and acted in all phases of the Sperry matter as presented by Chadbourne on supposed grievances of TWA and others of SCHTAAG.

37. On the same Friday the 13th, however, Anaconda Vice President and General Counsel, Richard Steinmetz ("Steinmetz"), told me that Anaconda had had no part in SCHTAAG; and that all it knew of it was what I had told him.

38. Chadbourne had earlier advised that its action was not responsible so far as Gulbenkian appeared to be concerned.

39. American Brands has been silent to repeated demands for statement as to its responsibility. So has Gulbenkian.

40. The disclosures by TWA and Anaconda came midway between events of TWA which must be considered here.

41. On December 21, 1974, the New York Times reported on forthcoming confessions of kickbacks in connection with proceedings of grand juries in the Eastern District of New York. It has shown that hundreds of millions of dollars of kickbacks had been made to travel agents by TWA and others.

42. Kickbacks involve criminality at the corporate level, but perhaps not at management level, though that seems inconsistent with generally applicable kickback law as applied to others, especially in the aerospace industry.

43. Whatever the criminality, there is no deductibility.

44. For lack of deductibility, TWA claims involve tax and SEC aspects like those of MMM.

45. The amounts involved for TWA and its management are enormous: in all probability exceed by far any amount bearable by TWA.

46. Effects of insolvency could differently affect variously situated persons: the survivors of those lost at Mount Weather; creditors of various classes, including banks and holders of certificates involved in so-called leasing transactions; and the United States Government, as a creditor for taxes.

47. If so-called leasing rulings are valid, banking interests, rather than TWA or the certificate holders, are entitled to tax benefits of fast depreciation and of investment credit. Under the rulings they are the owners of the aircraft involved.

48. If the rulings are invalid, TWA is entitled to fast depreciation and investment credits. This entitlement might only deprive the banks of benefits to which they have assumed entitlement. This would be true to the extent that use by TWA of those attributes would not affect its tax liabilities.

49. The United States Government would not be the only person interested as a creditor in the validity of the rulings. Thus it may be assumed that such validity will be effectively questioned.

50. Their vulnerability has been of growing concern to me.

51. In getting the rulings, TWA was confronted, in my own experience in representing TWA, with a position developed by a top tax technician of the Internal Revenue Service, that only TWA could be treated as the owner, since it guaran-

96.

teed payment of the purchase price of the aircraft. The objection seemed technically insurmountable. Not so, in fact, however.

52. As I was later apprised, TWA caused intervention by a Washington lawyer, through the office of then Chairman Mills. The technician was then overruled by his superiors. All evinced chagrin. My relations, previously excellent, were harmed; and my practice was seriously damaged.

53. Still later, I learned, from published CAB data, that TWA had paid \$50,000 in circumstances probably linking payment to intervention. Still later, I learned from the press, that a like amount had been paid to Mills' funds. The circumstances bear increasingly apparent resemblances to the payments from milk and oil interests, some reported as late as December 31, 1974, which have occasioned criminal involvements.

54. The matter has been of concern to me and TWA has refused me requested assurances.

55. At close of December 31, 1974, persons such as Mills may be got, by lapse of time, benefit of a period of limitations of 3 years instead of the old one of 5 years.

56. These current developments merit consideration in appraisal of the matters in this case here at issue.

57. My growing concern for Sperry and its problems, and need to take even further steps towards disengagement, came to a head with the advice to me of James K. Crimmins ("Crimmins") of Chadbourne, in late April of 1974, that there was no defense known for what Dunn had done in claiming

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double pensions, one under Keogh and one in guise of Sperry employee. This action followed in May.

58. There were other matters which came to bear of which I had not been fully aware.

59. In April, TWA had its \$100,000 a year Taylor flying about Europe, Lisbon included, with Timm, Chairman of the CAB.

60. In mid-April, the Internal Revenue Service issued a 90-day letter to TWA challenging pipeline assets which involved a potential swing of about \$20,000,000 in and of themselves for direct tax purposes alone. The dispute had been coming on for years. This event first came to public notice when TWA filed responsive suit in the United States Tax Court July 12.

61. In April, the FAA issued a report highly critical of airline safety practices, with particular reference to the March crash of the DC 10 costing 346 lives. The crash resulted from failure to modify a cargo door. The modification was recorded as having been made at the factory. The record was false. There had been no modification.

62. The challenged pipeline assets resemble the cargo door in that they are parts or components of aircraft vital to safe functioning and are required to be recorded.

63. I had come to have doubts of the integrity of TWA pipeline accounting; had sought assurance; and had refused to press the matter in negotiations I conducted with otherwise practically complete success with respect to proposed adjustments to income of TWA for tax purposes in the amount

of nearly \$150,000,000. Continued inquiries had been of no avail.

64. My concern mounted with reports of widespread kickbacks to passenger agents. The first notable one was by a former partner of mine at Chadbourne, Spater. Spater had been caught with a contribution of foreign-laundred American Airlines cash to EEP. On the other side of the transaction were false assets. Spater complained that what he had done was trifling in comparison to the evil of kickbacks. He so complained just after the last election of Nixon. His charge was followed by a spot check of ticketing at Kennedy, which showed that TWA had irregular ticketing at a rate twice that of the next worst offender, Olympia, and many times that of Pan Am.

65. In May of 1974, there were further press reports on an Eastern District grand jury on kickbacks.

66. I then wrote to Secretary Binder to express concerns including those for public safety, inter alia. The full text is:

May 13, 1964

Mr. Robert Henri Binder
Assistant Secretary of Transportation (Designate) for
Policy, Plans and International Affairs
Department of Transportation
Washington, D. C. 20590

Dear Mr. Binder:

I write to you as one interested in our outstanding achievements in technology, particularly aircraft. I served on the so-called President's Panel on Technological Innovation with Peter Peterson some years ago, and have had a life-long interest in air transportation, in later years, principally on the tax and legal side.

I got the pioneer tax rulings on aircraft leasing, rulings perhaps flawed in respects which may have important significance for the lenders and airlines, as I have recently discovered; but which I need not detail here.

I appreciate your responsibilities, especially with Mr. Flanigan reported to have his house up for sale, with Mr. Timm disposed to travel about Europe, and with Mr. Butterfield evidently not in any significant role on the immediate occasion of this letter: the Pan Am/TWA plea for financial aid by means which are anti-competitive and hardly encouraging to the traveler, the taxpayer or even the lenders. Years ago I got the tax rulings for the merger of TWA and Pan Am, but, as fortune's smile changed, that merger did not take place.

I am concerned by Mr. Tillinghast's characterization of Pan Am as a "sick" "girl" he would prefer not to marry, as reported in the current Fortune. TWA did lose almost 6 times what Pan Am did in the last quarter on airline operations. No doubt the relatively large loss resulted in part from distractions of running the hotel business (in what might be regarded as intolerable situations in respect of

indigenous workers) and the food concessions at the race-tracks and sports arenas. On the other hand, TWA doesn't have the Pan Am record of 4 707's crashed in 9 months, evidently through pilot error, if being a Parkinsonian pilot allowed to fly into fog-bound Logan can be so described.

I was interested to see on last night's 60 Minutes on CBS the modified re-run of the adventures of Larry Ives, the poor 57 year old TWA pilot with his excessive inputs of caffeine and nicotine as he earns his 70 thousand or so in 10 days out of 30 in the month. To be sure, he's terribly tired, more tired than a younger man such as those he outbid for the run, and far more tired than if the FAA would get its regulations into the jet age. In the 30's and 40's conditions weren't the same as now; yet the whole jet age has escaped significant pilot safety regulations. Even our airlines don't base personnel abroad any more. Better to kick back to the travel agent and have tired pilots than do that reasonable thing, the money men and lawyers seem to think.

If there were rules there might still be some questions of observance. Consider how Spater violated laws, some of the order of felony, and implicated many, in his little laundry, so much less sophisticated than the machinery of, say, TWA.

Pan Am and TWA really puzzle me. Pan Am wants to buy more 747's and get a subsidy when other 747's are staked out in the desert. And TWA's dream of more Tristars seems to ignore the fact that there will be no true long-range version.

And they push for less service and higher fares and more subsidy and less taxes from themselves and more for the public generally while they have been fighting Laker, who offers a sensible transportation service at a price fair for transportation if not hot cuisine.

Our airlines are notably extravagant. Executive salaries are extraordinarily high considering the earnings of the airlines and the earnings of their executives before they came to the airlines. Pilots are paid enormous salaries, about twice what their foreign counterparts get on any reasonably comparable basis, even ignoring their fantastic benefits via IRS largess in not finding the pilots highly paid or supervisory for pension plan purposes. The airlines fly planes with very light loads, especially in the

economy-subsidized first-class, which in turn is largely occupied by company people deadheading. And nobody pays income tax on the value of the free flying the airline people and their families get to let them live in tax shelters in some cases.

Airline accounting is not reliable. Travel agents have been getting a compound skim reported to run as high as 50% in addition to the initial cut of as much as 11%. Take off recognized selling costs in the hundreds of millions and consider the load factor, and only a small fraction of what ought to go for safe flying so goes. Careful accounting would no doubt occasion grave concern in respect of pipeline items, spare parts, and foreign repairs. One might conclude that not all the fixing done is done to aircraft. And the landing fee matter has not been at all well handled.

The airlines have even acted so as to jeopardize the tax shelter said to be involved in their so-called leasing arrangements. If that matter were set aright even the lenders might suffer far more pain than they ever expected.

Airline managements seem to prefer activity other than transportation. Vide the hotels, slot machines, etc. And TWA has a Vice President Executive Compensation but won't say whether it has a Vice President Safety or Foreign Accounting or Taxes. Who was it who called transportation the opiate of the masses?

Airlines lack independence. The lenders have them in full control, and the airplane manufacturers do unto them as they will and so do the unions. The only bodies whose impact is not felt are the Federal regulatory persona.

Mr. Justice Black used to be fond of telling us Law Clerks that when a regulatory agency achieves that stage of innocuous desuetude as to have won the approbation of those whom it was intended to regulate, it is time to get a new regulatory agency.

Airlines don't even accept feedback from any constituency. They pamper the first-class customer who really is hardly there at all, except in the luxury lounges, and ignore the economy and the youth markets. They even dick stockholders and forgather in places like Overland Pass, Kansas, for annual meetings. They ignore stockholder mail. See the attachments, selected illustratively.

You've got a real job. Human lives are at stake. So is our reputation and what we do. I wish you well.

May there be no more tragedies because the manufacturer falsely marks correction of its initial mistake in getting away from the plug type cargo door and some airlines are too cheap to correct obvious safety defects of the sort.

With kind regards,

Sincerely,

John F. Costelloe

Attachments to follow under separate cover.

cc: Messrs. Flanigan, Rowe, Seawell, Spater, Tillinghast, Timm, Tribbe

67. I proceeded with this action.

68. The response was savage. Chadbourne demanded that I be put out of all Courts for all times for all purposes concerning all clients, especially, TWA, Sperry, Anaconda, American Brands and Gulbenkian, each wrongly indicated in the papers to have serious grievance.

69. With evident reference to the letter to Binder then--and still--unanswered, the papers asserted:

"* * * Costelloe may in no event maintain this sham action * * *. * * * Costelloe is engaged in a vindictive, bitter campaign against Sperry Rand, the firm and the firm's other clients. * * * Costelloe has sought to extort moneys from Sperry Rand, Dunn, the firm and the firm's other clients." /Defendants' memo, p. 4./

"* * * vicious letter writing campaign * * *" /Defendant's memo, p. 11, Dunn Affidavit, para 4./ "* * * vindictive in the extreme." /Defendants' memo, p. 11./

70. The complaint was described as:

"Costelloe's paranoiac assertion * * *" /Defendants' memo, p. 6./ "* * * a sham * * * a fabrication * * *." /Defendants' memo, p. 7./ "* * * fabricated pro se action and * * * personal vendetta * * *." /Defendants' memo, p. 10./

71. Further response was made in the Sperry Proxy Statement circulated at the same time. It stated:

"The Corporation and Stannard Dunn * * * have been named as defendants in a suit instituted on May 23, 1974 in the U. S. District Court for the Southern District of New York by John F. Costelloe, a former partner of Mr. Dunn in the law firm of Chadbourne * * * and the holder of 10 shares of the Corporation's Common Stock. The plaintiff alleges, among other things, fraudulent concealment and misrepresentation in violation of Federal securities laws and the Internal Revenue Code, unlawful restraint of trade, breach of fiduciary duty, inducing breach of contract, defamation, and malicious and coercive acts. The plaintiff also asserts that Chadbourne * * * has refused to pay him amounts said to be owed by the law firm, although the original complaint does not name the law firm as a defendant. He claims damages to his professional standing and as a stockholder in the amount of several million dollars,

together with costs of suit, and also asks for injunctive relief. The Corporation and Mr. Dunn deny any wrongdoing and have moved for a court order dismissing the complaint and for injunctive relief. The Corporation has been furnished with the opinion of John A. Huston, Esq., its Vice President-Law, that the plaintiff's claims against the Corporation are without merit, and with the opinion of Chadbourne * * * that the plaintiff's claims against Mr. Dunn are without merit.

72. On the return day of the SCHTAAG papers, July 1, I protested in person in Chambers that the effort would ruin me without a hearing. I pointed out that the demand for permanent injunction purported to deny me any hearing although the Rules required hearing even for a preliminary injunction far less drastic than that of a secret permanent injunction from action of any sort in any court against anyone about anything. The suggestion was made that I apply for temporary restraining order. I agreed to do so, with return date, July 12. Warner was present and made no objection. With that, I left Chambers. That same day there issued an order sealing the file but in effect denying anonymous designation.

73. While preparing papers for the restraining order, I became aware of the Sperry publication of the matter to its stockholders in its Proxy Statement, quoted from above.

74. On July 12, in informal conference in Chambers, Warner conceded that Chadbourne had participated in the publication of the Proxy Statement. He offered no explanation of why that publication had not been called to attention of the Court in getting file sealed or in demanding the harsh measure of secret ostracism without hearing.

THE COURT SHOULD DETERMINE QUALIFICATION OF
CHADBOURNE TO REPRESENT OTHERS IN THIS ACTION

75. There is no question of my right to represent myself in this action or of the right of Chadbourne to represent itself, including its partners. Chadbourne is entitled to seek for itself any result it sees fit for any reason it wants. Its entitlement is, however, for itself. That does not run to any particular client or group of clients with different interests. Representation of even potentially conflicting interests, especially one's own, in litigation, is clearly interdicted. See Attachment A.

76. This case began as an action pro se by me against Sperry and Dunn to test the propriety of what Dunn had done in ostensible and publicized dual roles as Chadbourne Senior Partner and as purported Sperry employee under its otherwise qualified retirement plan. Damages were sought on the ground that, in their effort to cover up, I was harmed by independent wrong.

77. I had hoped that Sperry would use the opportunity so presented to justify what was done for Dunn or to correct it. I had anticipated MMM, and wanted no part of the results which have just been shown to obtain: corporate damages compounded by tax fraud penalties and on to individual liabilities in what may be ever widening scope as National Student Marketing and Meyerhofer and Lanza and the like develop. I had no Eisen wish; but I had been the tax partner and so was perhaps especially at risk of attack, though I had left my partnership in Chadbourne in protest.

78. I had advised that it appeared to me improper for Chadbourne to represent Sperry, and I have so maintained with full consistency. If Sperry got in trouble it was for Dunn and on his advice. Giving, for fee of course, advice, was what he did as Chadbourne Senior to himself as Sperry employee.

79. I had hoped that Chadbourne would be relieved to have the matter brought to a head, and would welcome representation of Sperry by independent and qualified counsel. That had been so in Hughes, where another firm was brought in because Chadbourne had been involved in the challenged transactions, to an extent far less than here. It would have been so easy to stop the whole thing by simply pointing out that what was done for Dunn was right, if that were possible.

80. Instead, Chadbourne tried to get the case suppressed: anonymous designation, seal of file, personal vilification and all. In flagrant disregard of long-established relations with other Courts, Chadbourne asked that this Court enjoin me from access to all Courts for all times as to all clients of Chadbourne, a group never identified except as to members of SCHTAAG, acronym for Sperry, TWA, American Brands, Anaconda, and Gulbenkian Foundation of Lisbon. No specification was made of supposed grievances. No affidavit except those of Dunn and Huston was presented. The latter was only formal and the former was largely false. The real force was in the unsworn false vilification of Warner.

81. No limit was to be placed on judicial ostracism. I would be out of all Courts for all times on a global basis. Even Chadbourne, creator of Playgirl and Hughes and author of successively abortive efforts to petition the CAB for TWA, knew better.

82. Chadbourne demanded that the injunction be permanent. Then it advanced the non-sequitur that no hearing was in order. I pointed out that even temporary restraining orders require prompt hearings and findings. The astonishing response was that since injunction was to be permanent I was not entitled to the protection provided even as to a temporary injunction.

83. Chadbourne advanced a novel sort of reverse spurious class action concept. It invoked not only Sperry and Dunn and their situations: it invoked all of an undefined and ever-changing and by no means exclusive clientele; some of it mine also. It has taken much thought and effort to provide in FRCP 23, means for providing remedy for a group of persons who are unrelated and scattered so as to make joint action in usual course impractical. Means include making them parties. Chadbourne, however, would impose on the system a new device for a group identifiable if only by the definition of the group in an array against one individual, some as parties, and others as participants working in common cause behind seal but without responsibility of a party. An action against Sperry and Dunn in a pension matter, had joined in it as participant but not party, and without motion, TWA, to silence me for raising questions of kickbacks, pipeline assets, rulings, and relations with Government.

84. Chadbourne sought to protect its clientele from depredations of truth or even inquiry from the likes of me, and put Chadbourne in position to continue to collect for itself for the work I had done quantum meruit, e.g., adjusting with almost complete success--except for the now-litigated pipeline assets--income adjustments proposed for tax purposes against TWA in the order of \$150,000,000. I wonder why, and indeed if, American Brands and the others joined in to be protected by such means. Problems can be synergistic.

85. On December 13, I learned that TWA has been an active force in inception prosecution and direction of the effort. It has thrown its large resources of money and considerable resources of prestige behind this action. It would destroy me for reasons of particular vulnerability of its own, now clearly seen in lights of kickbacks, pipe-line assets, tax problems, and unfolding airline safety and perversion of Government scandal; but would escape normal scrutiny of a party.

86. I had questioned Timm's behavior and the payments to Mills and the abuse of the rulings process. I had challenged disregard of human safety for selfish purposes, the tolerance of criminal kickbacks in the hundreds of millions of dollars as against refusal to pay \$10,000 for a warning device which would have spared 92 lives lost December 1, 1974, on Mount Weather and the embarrassment of cutting the lines to the nuclear retreat of the President himself. It was I who pointed out to CAB and Justice and the Internal Revenue Service that the vital interests of the Government revenues gave access to means of control and suit not avail-

able in such matters, even to protect human lives, and gave the suggestion evidently reflected or implemented in the very recent kickback confessions and in the proposed new legislation.

87. It was TWA who financed this effort and marshalled the forces of lawyers whom it paid in the millions of dollars a year against me and joined with those lawyers in holding back even fees collected for work I had done years ago to get me implicated in the criminality, now becoming ever more clear of a steady flow of published reports on airline scandals.

88. Sperry, as purportedly represented by Chadbourne, is on a course which could not be acceptable to an informed operating management, or to others such as stockholders, myself among them. Loss of access to Federal Courts on grounds of diversity for claiming a principal place of business here would be a disaster to Sperry (and many others) of first order. It would be a terrible blow to the New York bar and would deprive our Federal Courts of their most significant civil judicial business.

89. Chadbourne, in purporting to represent Sperry, is really representing Chadbourne. Sperry, it may be hoped, could survive such rectification as may be in order for what Dunn did, though Warner pointed out at the outset that amounts involved could bankrupt Sperry. But Chadbourne could not survive the consequent liabilities for itself as illustrated by MMM.

90. Not only does Chadbourne ostensibly represent itself and Sperry specifically in the litigation in conven-

tional adverse postures of litigants who are parties: it has on stage in novel posture, supposed participants who are given special status by being spared, if Chadbourne has its way, the exposure and responsibilities of a party. If successful, the system would be to Chadbourne's advantage in letting it represent interests of a participant where representation as a party would be unthinkable. We submit that artifice ought not be so destructively productive.

91. Whatever may be said of Sperry, its interests in this are different from those of TWA. Sperry was involved only in money and taxes and possible related criminality, in consequence of evident reliance on Dunn. There appears no disregard of public safety or scandal such as so flaws TWA. Sperry presumably is durably solvent, but TWA may inevitably become insolvent and sooner nationalized. As joint defendants they no doubt would be at odds with widely divergent interests.

92. Surely Anaconda stands differently than either. It seems to be a participant only by contrivance of Chadbourne. Gulbenkian may be horrified by what transpires here though that does not lessen the harm to me of use of its name and misuse of my correspondence with it here.

93. Conflicts of actual, and, all the more, potential, interests, are clear. There are plenty of lawyers to represent those interests. It is unthinkable that the same lawyers would represent Chadbourne and TWA and Sperry and Anaconda and the rest as parties. No less should they be so represented as participants with all the good things and none of the bad of status as parties. Mandatory standards

111.

of professional conduct merit respect, consideration and application by the Court. See Attachment B.

94. The course of this case illustrates the wisdom of interdiction of representation in any such conflict. The Court imposed seal of secrecy suddenly, and hardly with appreciation of what it was being sold into. Chadbourne got same-day service without hearing. My papers demanding relief in appropriate form and made returnable July 12 by agreement, evidently have not been acted upon. The Court has delivered itself six times in diversity-related matters, thrice one day; and only now is considering the first sworn evidence on the matter of Sperry by anyone. The Court has the case in posture ready for appeal but almost impossible of effective appeal. Even the severance of Dunn is not decided, and the Court of Appeals and I may be faced with the burdens of hypothetical alternatives and successive appeals unless that simple matter is resolved so as to admit of effective appeal.

95. Chadbourne has also gotten into position where advocacy is no longer permitted for having given evidence on disputed facts intended to be dispositive of the case. See Attachment A.

96. In addition to the matters of principle of conflicts and testimony, where objective standards are intended to save the Court from need to inquire into particular questions of propriety, Chadbourne has been flagrantly lacking in candor. The current handling of the facts of diversity is one example. Misdating of the Gulbenkian letter, and misrepresentation of its interests, are another. So is the

contention that I sought to borrow to embarrass the firm. None of this has been corrected.

97. Finally, Chadbourne is in the difficult situation of having combined with others to aggregate claims against me to implicate me in misdeeds and thereby to obstruct justice. Watergate's verdict has a lesson on that. So does the experience of MMM.

98. I have no sure talisman of correctness in these matters beyond such powers of reason and expression as I may have and such authorities as I may muster, if allowed. The Court must have aid of counsel for defendant not blinded by extraneous factors making it difficult, or objectively unlikely, to perform the difficult task of officer of the Court in advocacy adequately for purposes of the Court.

99. No man can serve two masters. That is not a matter of morality but of actuality.

THE COURT SHOULD REQUIRE THAT PARTICIPANTS
NOT PARTIES BE EXCLUDED FROM THE PROCEEDINGS
OR INCLUDED IN NORMAL COURSE

100. If TWA wants to litigate with me, it should sue me or become a party to this suit or at least give up covert stance as dominant participant here in effort by falsehood and deception to prevent me from litigating on anything like conventionally equal terms.

101. Court's good offices and my time have been wasted by the essentially deceptive and oppressive posture of TWA in the matter. I doubt that others of SCHTAAG than Chadbourne were fully aware of the dominant role of TWA as it first became known December 13.

102. It is ironic that in proceedings where I would not be granted evidentiary hearing, and indeed have not been, TWA sought to have me barred in all cases without any hearing as to what would be involved. (My suing it in regular course would thus be characterized as insufferable and incurable injury; its proceeding against me in oppressive and covert course is the pattern it has chosen for itself to escape fair trial.)

103. Gulbenkian should be made to speak for itself if only to help judge what to do about Chadbourne for its conduct as purported counsel and to provide, if need be, confirmation of the wisdom of respecting standards governing professional representation and conduct.

104. So also as to all others. Chadbourne should be made to affirm, in today's circumstances, and to justify, the existence of SCHTAAG and its representation of it, as alternative to prompt disbanding of it for all purposes and making amends to me for what has been done. I so demanded in my papers of July 12.

105. Injunctive proceedings of this sort are at most ongoing and subject to further action as occasion arises. At a minimum, let this case, complicated enough as it is, proceed in normal course. Else there will be no hope of achieving representation between those such as I and those such as TWA, whose powers have already been demonstrated as less than fully beneficent for public weal.

106. There ought at a minimum be conference, formal or informal on these matters, and on the extent of the oppression and attrition I have suffered since my plea for relief of July 12.

114.

THE CASE SHOULD BE ALLOWED TO PROCEED IN THIS COURT
IN NORMAL COURSE, WITH SEAL OF FILE REMOVED AND
APPROPRIATE DISCIPLINE FOR PRIOR BREACHES

107. On the matter of evidentiary hearings on diversity as to Sperry, appropriate representation of Sperry might occasion new approach. Diversity might be seen to such representative as even more dear to Sperry than it does to me. My concern is that the problems are basically federal and national, and concern laws as to which Federal Court jurisdiction is exclusive: tax, SEC (vide MMM) and the like. I do believe that to this point I have been restrained in what I do, and I do it on an interstate scale, in the range from Boston to New York to Washington. Sperry's concern would be rooted in basic commercial necessity of maintaining assurance of commercial relations by access to Federal Courts.

108. New counsel might also wish to sweep away the whole structure of SCHTAAG. Surely, given a choice of being an overt party or of getting out altogether, TWA should prefer to get out. I maintain that TWA should be made a party and the case should proceed on facts as they have developed in this case and concurrently with it.

109. Seal was obtained on misrepresentation of facts purposes and participation and interests. It has been abused by disclosures among and by SCHTAAG, as I warned in my papers of July 12, and by publications by Sperry and by misuse in State Court by Warner.

110. Underlying matters which TWA would cover up are now publicly seen to be of monstrous proportions. This

Court should no more suffer being wrapped about them as protective coloration than should Sperry be wrapped around Dunn to shield him. I am a stockholder in Sperry and my son is one in TWA. We both have interests that way as well as in the fact of my impending ruin through abuse of this Court's processes. Even the SEC has been made unwitting instrument of defamation; and the actions of this Court itself have been misrepresented.

111. It was not I who brought TWA matters into this case. I still am reluctant to put those matters into private litigation and have not done so. If there was exposure here despite my best efforts even in a case under wrongly obtained seal with TWA wrongly interfering, the exposure of recent days and weeks has paled anything in my power.

112. Sperry has publicized the matter, and wrongly; and the unknown role of TWA should be revealed.

113. Seal of file should be lifted and those who acted as they wrongly did should be disciplined.

THE COURT SHOULD ISSUE ORDERS ENABLING
APPROPRIATE APPELLATE REVIEW IF NEED BE

114. My motion pointed to specific needs in these respects, and I would comment but for limitations of time, a chronic problem in this case, which has proceeded without regard for the usual stopping points of stipulation, discovery, proposed findings, findings, briefs and memoranda, settle order and the like.

115. Let the Court of Appeals be spared anything of the sort. Whatever is the disposition as to Dunn, let it be so ordered so the Court of Appeals will have a real case to review and decide without distractions of hypothetical and alternative factual assumptions and arguments thereon, and without prospect of redundant and successive appeals.

116. The Court ought to have Chadbourne prepare a form of order in this confused case and let me have reasonable time for response.

117. If not, I may be driven to the position of conducting an appeal in this case while starting litigation afresh to bring TWA to the bar on the facts as they have come to be known. I respectfully suggest conference to consider that course and other aspects of this case, which has gotten to six pronouncements and other action before a single conference or a word of live testimony or a stage of discovery has been allowed.

THE COURT SHOULD ACT ON MY APPLICATION
RETURNED JULY 12

118. This was made in good faith on suggestion when I protested on July 1 at the outrageous tactics defendants employed. Where defendants got instant action on secrecy with no urgency, let me get some reaction in a matter of ruin to me through abuse of the Court's processes by the participants of SCHTAAG from before June into January.

THE COURT SHOULD UTILIZE ITS OWN FACILITIES

119. I have had to proceed in this case without access to the facilities of the Clerk of Court. Papers were refused there, and could be filed only in Chambers. On one occasion I had to put papers in the letter slot during normal working hours. There is no known current docket. Chadbourne would not even let me verify the contents of the file. I would not know how to get the record certified for appellate purpose.

THE COURT SHOULD SEE THAT THE CASE IS APPEALABLE

120. This case is in some disarray, having proceeded without normal conference, evidentiary findings, and memorandum procedures. The order would admit of almost endless argument on its meaning for appellate purposes. The Court of Appeals should not be called on to decide the matter of diversity as to Sperry with the matter of Dunn as it is. At a minimum there should be an order as to diversity as to him and as to severance for purposes of proceeding against Sperry alone or against TWA and all of SCHTAAG, as I maintain should be allowed.

121. Let Chadbourne be asked to prepare an order for the Court to settle and let me at least have opportunity to present views, the opportunity being made in terms of ability to function in time allowed in complex matter. Throughout the case I have been handicapped by having to deal with

evidentiary matters and matters of law without appropriate resolution required to let the case proceed step by step. As it is, there has not been time to do, as it were, almost everything at once.

Dated: Centerport, New York
January 3, 1975

Respectfully submitted.

John F. Costello
John F. Costello
Plaintiff, pro se
216 Little Neck Road
Centerport, New York 11721
516 261-5235

Albert A. Hanko
Sworn to before me this
3rd day of January, 1975

ALBERT A. HANKO
NOTARY PUBLIC, State of New York
No. 52-6757311
Qualified in Suffolk County
Term Expires March 30, 1976

March 10, 1975

The Honorable Orrin G. Judd
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: John F. Costelloe v. T. W. A.
75-C-157

My dear Judge Judd:

I filed notice of appeal March 6, 1975, on being told that time counts from the date of oral opinion on February 7, 1975.

Chadbourn, Parke, Whiteside & Wolff paid me \$20,000 by certified check delivered by mail March 5, 1975. Much more is long overdue to me of amounts withheld from my share of partnership earnings before mid-1968.

By letter of February 24, 1975, received February 27, Freshfields of London once again stated for Gulbenkian Foundation of Lisbon that Chadbourn's attacks on me are of no interest or concern to it or its officers.

On February 10, 1975, acknowledgement of corporate guilt of TWA in the airline kickback matter to the office of U. S. Attorney Trager, with unsuccessful effort thereby to shut off matters of personal guilt of TWA management, demonstrated existence of very complex and differing interests of

various persons, corporate and individual, as such and in professional organizations, in matters of civil and criminal liabilities in the spectrum from corporate law to SEC matters to taxes and penalties. Compare, for example, the attached clippings from yesterday's New York Times recounting the manifold involvements of 3M and its management, and the death of Gingery, late chief of CAB enforcement. Consider also the clipping from Friday's Times of an account reporting assertion of "vendetta" by a U. S. Attorney in the Singer Company matter growing out of Agnew kickbacks which occasioned Agnew's resignation in November of 1973, the month when Gingery succeeded O'Melia.

As I told the U. S. Attorney General and the U. S. Attorney by letters of February 14 and February 24, needs of justice evidently would not be met without criminal sanctions for top TWA management, surely aware of what went on, after sojourns with Timm to Lisbon in April and to Bermuda with Timm and McGregor in June, which drew letters which Warner said annoyed them and so, he said, made me criminal.

I will appeal the decision denying disqualification of Warner in the proceedings in Chambers, when I first had opportunity to see any of the papers Warner submitted. The proceedings lasted less than an hour, and the transcript is incomplete and erroneous. I do not know what facts are the

basis of decision putting me out of Court even as principal and allowing no opportunity to amend in normal course.

On appeal, I will rely on Warner's misrepresentations in Court after Court even as to who are represented by him; on representing conflicting interests in litigation, even if representations as to whom Chadbourne (or Warner on his own) represents in substantive, qualification and grievance matters are accepted as true; and on action as advocate after serving as substantive witness without need.

I submit that Warner has been seriously lacking in candor in relations with Courts. Our adversary system depends upon reliance by the Court on its officers in representation of parties. Attempts to bring in extraneous participants and to relate case to case under seal induced by misrepresentation and abused for further misrepresentation and confusion, contribute neither to confidence in our system of justice nor to justice itself. Nor can representation of conflicting interests in litigation by such means, obviously intended to impact the system. Nor can advocate's giving evidence as witness, sworn or unsworn, overt; or under guise of another's oath to what he writes, in circumstances calculated to prevent development of the truth in normal course.

Warner charged me with crime for annoying TWA management in matters such as kickbacks, which were and are under active consideration by litigating personnel of the Internal Revenue Service in litigation instituted by Chadbourne last July 12 in U.S. Tax Court. Warner concealed that from Southern District, even in a meeting in Chambers on that very day, after Chadbourne had filed the Tax Court suit; and in trying to explain why he had not disclosed to the Court, in getting sudden seal of secrecy July 1, 1974, without hearing, that he and Sperry had in June, in the Sperry Proxy Statement, publicized the matter in misleading manner to more than 100,000 Sperry stockholders, and so the entire financial community.

Evidently any annoyance was to the good. The working day after the hearing where Warner accused me of annoyance, TWA was acknowledged to be in criminal guilt in the kickback scandal which had occupied two grand juries in proceedings which had gone on for about two years.

Like many in and out of Government, I believe that airline kickbacks must be the other side of some of the worst of Watergate. I had been constrained to apprise tribunals, in compliance with requirements of the Code of Professional Responsibility. The task was the more difficult by the coercion of Chadbourne making it difficult for me

even to meet mortgage payments and insurance premiums, and impossible to get effective legal representation. It was also made especially difficult by the fact that an affected tribunal evidently was infected also.

I will maintain that, in proceedings here of Chadbourne's choice as to timing, showing, and seal, there was no showing or finding sufficient to qualify Warner and Chadbourne and to disqualify me as principal, and as putative representative, under the Warner Brothers line of cases, of which Emle is one, different in kind from this. I will maintain that procedural aspects were inadequate, and that there should have been at least proceedings complying with those of FRCP 65 for provisional remedies, in respects including demanded evidentiary hearing and findings. I will maintain that on examination of Fletcher in normal course his evidence would be entirely different from that produced so suddenly by affidavit obviously drawn by Warner, with his obsessions in relations with TWA, with which he has spent practically all of his professional life more as workman than as "the lawyer" representing "his client".

I hope to have guidance of the Court of Appeals through its opinion in Silver Chrysler reviewing policy on qualification, after holding the matter to be of such importance as to occasion reversal of earlier authority on appealability.

I have tried to be of some assistance there in providing data on my own remarkable experiences with variations of Warner Brothers which would repress in silence one possibly troublesome in insisting that he heed admonitions, including those of the SEC and Bar Associations, that he be true to law and not aid or abet crime of misrepresentation or other sort, though lawyer as well as concerned citizen. It is recognized that even the lawyer, especially the individual, may be duped or otherwise victim of powerful client, and that the Code of Professional Responsibility in its deference to substantive law defers to authority such as Meyerhofer and its requirement of disclosure to the affected tribunal, in concord with the SEC brief amicus in the Court of Appeals. It is also recognized that the Code is an inadequate instrument for solution of today's complex problems in many circumstances.

The problems I faced were complex and difficult. Consider Gingery (protege of Timm, and successor to O'Melia) who became so distraught as to commit suicide on February 17th, just a week after TWA acknowledged corporate guilt, and just two days before he was to appear before the Kennedy Subcommittee, where comments were critical of his function. I thought well of him as a conscientious man caught up in

forces he did not fully comprehend and for which he lacked means to cope.

Qualification and disqualification are instruments of the Court for protection of the adversary system by control of its officers. Control is continuing, and if facts appear to be different than had been represented, so much the more reason for action by the Court sua sponte. I submit that if anyone was extorting, it was Warner or Chadbourne or both; surely not I. Chadbourne had my money, earned as a partner and long overdue; and kept it in efforts to tie to independent and unrelated matters. It very nearly succeeded in that, and surely succeeded in damaging, perhaps beyond remedy, my credit, my wife's health, my children's lives, and my health and professional prospects.

Warner must have known on February 7 what was to transpire next working day. Then came acknowledgement of guilt which he must have labored long and hard to cover up. Warner's professional career is practically coextensive with TWA's existence. He spent years at Kansas City Headquarters. Since removal to New York after I had joined Chadbourne, he was largely occupied in TWA matters, although for the most part peripherally so far as litigation was concerned. His knowledge of the internal workings of TWA at operating levels, from baggage to ticketing, no doubt is greater than

that of any in Chadbourne and of almost all in TWA. He must be a witness in forthcoming kickback trials and litigations, this properly included.

According to press reports, acknowledgement of corporate guilt, February 7, was accompanied by some sort of purported (and since repudiated) public plea bargaining which would have let off individuals in management in exchange for implication of the corporation--without soul or wit--to which they were charged by law to furnish honest and efficient management.

Warner's real concern seems to have been for individuals in and of corporate management, himself included. As to TWA, he said there was no ad damnum clause though that was clearly in contemplation by way of amendment.

His charge of annoyance is ridiculous by current lights. His charge of extortion is tired and false.

Last October, Warner suddenly threatened my wife with unstated counterclaim for Chadbourne far exceeding all the great amount Chadbourne held back from me. But in less than a month, Chadbourne paid \$20,000 of what was held back (and so threatened). Warner never did meet her challenge to articulate and explain that monstrous threat.

Warner accused me of crime in your Chambers February 7; but again Chadbourne paid \$20,000 in less than a month,

after what I consider reliable indications that Chadbourne is seriously reconsidering roles of Warner.

Had I annoyed TWA management the more, efforts at coverup in strange reliance on CREEP and its ways and people might have ended sooner and futures might be brighter in fortune and freedom. More of the trusting and terribly disappointed travellers might be alive, airlines might be safe, and there might be less concern for tired wings and dead engines. The New York Times of this morning reports new accusation that CAB is utterly callous towards airline safety, and we may well have airline management to thank for that if opinion reported just a week ago in a lengthy Wall Street Journal account of the crash outside Orly just a year before is well founded, as so many, and I, believe it is.

My protests were sound and fair. I protested to management and tried to get them to mend their ways. I wrote to them and to tribunals in letters which I will produce on appropriate opportunity. I was concerned for the March crash outside Orly, for the April junket of TWA's \$100,000 a year Taylor with Timm to Lisbon, and for the acknowledgement by Chadbourne that same month that it could not justify what had been done by Dunn to or with Sperry. I was concerned by the oncoming Watergate developments in aftermath of Agnew, tapes not the least; and for the sojourn of Seawell and

Tillinghast with Timm and McGregor (he of CREEP) to Bermuda in June and for the notorious intimacy of supposed regulators and regulated day in and day out. And for efforts falsely to implicate me.

In August, the day Nixon announced resignation, I told Gingery in offices of Trager that I thought that tax and ticket auditing should be tied. So they came to be and are. I did what I could to help evidently faithful Government officials solve professed puzzle of how kickbacks could go on under noses and perhaps within very arms of Government.

A week later, Chadbourne sent me two letters on two different letterheads, one long obsolete, under one date, August 19, 1974, stating:

"1. Your letter to the Foundation dated April 29, 1974 which we referred to in our papers * * * was sent to us by the Foundation early in May of this year, well in advance of the commencement of that action.

2. We did not furnish to the Foundation any of the papers which we submitted to the Court on behalf of the defendants, nor did we disclose to the Foundation at any time any of their contents. As you know the file in that action was sealed by order of the Court.

3. The Foundation did not participate or assist in any way in the preparation of any of the papers submitted to the Court in the proceedings."

The action so said to have been irresponsible as to Gulbenkian had gained some advantage for Sperry. It had provided specious basis for turning off questions at the

Sperry stockholder meeting July 31, made the occasion for further misleading statement to stockholders in October. On July 24, Judge Conner had rendered partial opinion rejecting Warner's outlandish demand to make me global judicial outcast for all time to give cohesion to such class as were; but giving some credence to claim of grievance of Gulbenkian.

Chadbourne had misrepresented the text of a letter of mine to Gulbenkian and had falsely dated it back a full year, to April 29, 1973, in usual Chadbourne pattern of quick affidavits and unsworn statements.

My letter actually was of April 29, 1974, the day Nixon announced that he was turning over tapes to exculpate himself and save Nixon from fate of Agnew for Agnew's own kickback operation. The Caetano regime to which Gulbenkian had been close so long had just fallen; and Taylor and Timm had just been to Lisbon. I foresaw and was constrained to report turbulence for Gulbenkian, whom I had served long and well, and for fair pay from it to me.

Those were parlous days. Days of April, 1973, were different in kind. Even Agnew was in seeming ascendancy. The airline kickback scandal, acknowledged only February 10, 1975, was only dimly perceived generally, after my former partner in a sometime Chadbourne firm, Spater, had confessed

his little laundry for slush fund purposes, protesting that his American Airlines was nevertheless pure compared to airlines which were in the kickback matter.

Chadbourne had ruined my bank credit when I tried to borrow on large amounts it held back. In effort to meet bills and support family, I later sought to borrow from clients on any terms they might suggest on what they had paid Chadbourne for what I had done and which it held back.

Tying was a way of life for Chadbourne. Candor was not. I only mention how seniors were formed, in the troubled times of Stanchfield and Levy and Manton, to their own lasting damage, conceded to me at long last after earlier reassurance to the contrary when Chadbourne sought me out.

Take Gulbenkian as a current and continuing instance.

Through 1970, Chadbourne tried to get for itself payment for work I had done for Gulbenkian, with Chadbourne's consent, and of enormous value to Gulbenkian. Chadbourne would pay me my money only if I would sign off as to Gulbenkian. Worn down, but concerned for tying and for fairness to one I had served so well professionally, I insisted that Gulbenkian be apprised. So it was, and Gulbenkian by Freshfield forthwith advised, by letter to Chadbourne of April 21, 1971:

"Thank you for your letter of the 14th April setting out terms of the settlement which you have reached with John Costelloe of the problems of both the Foundation and of your firm.

* * * many of the items mentioned in your letter, are
* * * of no concern to us."

Gulbenkian must indeed be dismayed by the Chadbournian propensity to tie, tie again, even after Chadbourne got \$200,000 for the exemption ruling I processed and later saved, only to be denied compensation by Chadbourne quantum meruit in any amount. Gulbenkian gladly paid me \$75,000 for intercession and advice effective in saving its exemption (worth tens of millions of dollars) from extirpation by the Revenue Act of 1969. That was only after Gulbenkian stopped Chadbourne.

To have to give encore in 1975 must indeed have been unsettling for Freshfields, U. K. solicitors for Gulbenkian, active in Gulbenkian management on global scale, and in its own right a power in Mid-East oil matters, as is Gulbenkian itself, successor to the fabled Calouste Gulbenkian, "Mr. Five Percent", among his popular designations. Freshfields evidently had not been apprised of the fact that after August 19, and on December 30, 1974, in evident consternation at demonstration of the falsity of Warner's sworn assertion that Sperry had but 5 vice presidents whereas it actually

had more than 50, Warner had renewed full scale the attack mounted in June for Chadbourne and purportedly for clients of its (and in some instance of mine) to whom I gave acronym SCHTAAG: Sperry, TWA, American Brands, Anaconda, and Gulbenkian. Unable to find out whom Chadbourne really represented, and mindful of the letters of August 19, and of my inability to ascertain whether that disclaimer of responsibility was itself responsible, I had moved on December 20, 1974, in Southern District in the matter (still pending there on such motions), for, inter alia:

"5. Ruling on standing of any of the parties to SCHTAAG who are not defendants, i.e., Chadbourne, Parke, Whiteside & Wolff, American Brands, The Anaconda Company, Trans World Airlines and Gulbenkian Foundation of Lisbon.

6. Ruling denying action demanded by and for SCHTAAG, e.g., putting me out of all Courts for all times, as alleged vicious extortionist with personal vendetta in paranoiac fear of harm to livelihood."

Warner had replied on December 30, 1974:

"4. There is no basis for the orders sought by plaintiff's motion of December 20 and none is advanced."

I believe that the very last thing Gulbenkian would want as super-privileged beneficiary of U. S. bounty, in troubled times properly presenting grave questions of changes in the original circumstances of bounty, would be to get into grievance controversy, especially in contexts of the

terrible and tangled troubles of TWA and of Sperry, with its insoluble matter of Chadbourne Senior Partner Dunn, who had passed as Sperry employee to get a second pension not contemplated by the Keogh amendments, by means including rewritten Chadbourne bills, false documentation, and, presumably, resumption to status quo as soon as Dunn "retired" at Sperry and went back ostensibly, as well as actually, to sole occupation as Chadbourne Senior Partner.

So much for Gulbenkian and for Warner's ploy to get me to City Bar in purportedly aggrieved status--except to note that Chadbourne's first effort to escape the sad scenario at Sperry for Dunn was his invocation of utter secrecy for all things while I was at the firm (however wrong, and though I left in protest). In 1972 I took the matter to City Bar to test that, and was advised forthwith by City Bar that the matter should be resolved in Court, not there.

I am sure that those whom Chadbourne claims as aggrieved clients do not have the sense of proprietary relations that Chadbourne evinces. When TWA has difficult litigation, whether liability, labor, trademark, or antitrust, it gets other lawyers. One difficulty of mine at the firm was the TWA propensity to look to me rather than to others in the

firm, even outside my speciality of taxes for the high-technological industry.

Even as to TWA, Meyer, its Chief, Finance, had written to me on March 1, 1972:

"* * * While I cannot comment on the merits of your quarrel with Chadbourne, it is perfectly clear to me that, whatever claim you may have against them, you have none whatsoever against TWA."

I sent no further bill to TWA and did no more then refer afterwards to lack of payment for valuable work, as efforts of Chadbourne to implicate me in increasingly ominous areas of doubts as to TWA mounted.

Tillinghast, head of TWA, wrote to me in August of 1974 to disclaim by clear implication any "conspiracy" between Chadbourne and TWA, a term of Tillinghast, not Costelloe.

Until December 13, 1974, a Friday, in-house TWA lawyer, Fletcher, was always attentive and courteous to my questions, where TWA stood on SCHTAAG, but was also ambivalent and evasive. That day, Fletcher told me by telephone that he had been active all along in planning launching and aiding the SCHTAAG attack. Then came news of proposed legislation to tie tax and airline ticket audits and of the December concession of guilt by other airlines in kickbacks. Then, published account of 3M and others, now in the range from American Airlines to Ashland Oil to Northrop to Phillips

Petroleum to the Singer Company. On January 13, 1975, Fletcher orally disclaimed. This was after I had written to Tillinghast so, as it is now said, to "annoy" him by saying:

"I complained of Kickbacks. Kickbacks are now confessed.

I complained of pipeline matters as presenting special safety problems in light of the March disaster near Paris because a door certified as refitted had not been. In April, we now know, the Government had for tax purposes put pipeline assets into contest involving nearly \$20,000,000 in all. TWA sued on that in Tax Court in July. Questions ought to be answered sooner than in normal course of tax litigation.

I complained of overpaid management who refused to provide safety equipment needed. We have suffered Mount Weather. Butterfield had anticipated that. He has reversed himself.

I complained of matters of public confidence. Only after Mount Weather did we learn from the House Subcommittee of the suppression of the highly critical FAA report in the Paris disaster. Suppression was to prevent use by survivors in litigation. Suppression became not feasible in the storm after Mount Weather.

I complained of infection by airlines of their regulators, including the FAA. Timm had been taken by Taylor to Lisbon, etc., in April. You were soon off to Bermuda with Timm and McGregor, he of CREEP, in circumstances of such scandal that Timm will not again be Chairman. The FAA, 55,000 of them, are rendered useless or worse. The public were led to rely on what was not there. Brinegar is out. Butterfield is on his way. Staggers, too, has been shown to have been rightly concerned, as conceded now, even by Butterfield.

I complained of interference in tax rulings matters. Mills is now in open disgrace. He does have newly acquired benefit of a relatively short period of limitations, effective midnight, December 31, 1974.

I was deeply concerned in anticipation of the 3M sort.

I had been apprised in April that Chadbourne could not offer justification for Dunn's passing as Sperry employee for retirement plan purposes while a Chadbourne Senior. I sued Sperry and Dunn in hope of clarification.

TWA for you took the occasion to try to implicate me in its terrors. It said, in current stance of participant not party, that what I did was in "personal vendetta." What of the dead and what of the confessions in kickbacks; and what came of CREEP? Do you not regret that warnings were not heeded to enable the pilot and the 91 others to escape Mount Weather? How many more must die?

You said that my actions were "vicious." Compare the perversion of our fiscal system in the hundreds of millions by false ticket currency, often more demanding on resources than valid dollar currency. Who got the diverted funds? Is destruction of the effectiveness of regulatory bodies not vicious?

Are pipeline assets more real than salad oil? See my discussion draft for Trager of 12/25/74, copy enclosed.

Are not the TWA financials hopelessly skewed, even compared to 3M and Sperry? See my notes of 12/23/74, and my affidavit of 1/3/75, copy attached.

You said that I alone was a threat to the combined forces of SCHTAAG. Was it not they who combined against me? What did you have to fear except truth? Is it not sordid to have Chadbourne withhold even pension benefits and collected fees for work I did as a partner to try to implicate me?

If Sperry did right, why didn't it just say so? Did it need you? Did you need it? Could not either one stand on its own deeds? If Sperry did wrong, why did not it long since so acknowledge, as has 3M?

Yet on December 30, with all the new knowledge gained since the mad days of March and the ebullience of Spring and the collapse of CREEP, SCHTAAG, creature of TWA, renews its June challenge.

As my affidavit of January 3, 1975, pages 23-24, paragraphs 100-103, stated:

'100. If TWA wants to litigate with me, it should sue me or become a party to this suit or at least give up covert stance as dominant participant here in effort by falsehood and deception to prevent me from litigating on anything like conventionally equal terms.

101. Court's good offices and my time have been wasted by the essentially deceptive and oppressive posture of TWA in the matter. I doubt that others of SCHTAAG than Chadbourne were fully aware of the dominant role of TWA as it first became known December 13.

102. It is ironic that in proceedings where I would not be granted evidentiary hearing, and indeed have not been, TWA sought to have me barred in all cases without any hearing as to what would be involved. (My suing it in regular course would thus be characterized as insufferable and incurable injury; its proceeding against me in oppressive and covert course is the pattern it has chosen for itself to escape fair trial.)

103. Gulbenkian should be made to speak for itself if only to help judge what to do about Chadbourne for its conduct as purported counsel and to provide, if need be, confirmation of the wisdom of respecting standards governing professional representation and conduct.'

* * *

You cannot cure what you have done but you can stop doing it. I don't ask that you tell Chadbourne to do anything but observe canons of professional ethics. I don't ask you to tell it to pay what it owes me. See

letter to Crimmins of 12/29/74, copy enclosed. I do ask that you not put Chadbourne for the likes of SCHTAAG, or, alternatively, piggyback on Sperry. Do stop any thought of having Chadbourne implicate me in the TWA terrors or in any rendezvous with the SEC."

The letter of January 6, 1975, from which this is excerpted, may have been annoying but was hardly threatening. The concept of me as a threat to the likes of SCHTAAG with all their powers and lawyers in-house and out, and with their enormous resources, is curious.

TWA management have always been attentive and courteous to me, perhaps because they respected my views of a situation in which Chadbourne seems to have been heavily implicated in ways going far beyond any duty of "the lawyer" to "his client", if one thinks of a large firm and enormous business entities that way. No letter to TWA was ever returned. No call was ever refused except in normal business course. Fletcher always answered my calls, which did not average more than two a year since I quit TWA work in 1970; and has returned calls promptly if he did not accept them at once. I never threatened him or demanded that he make payment for services rendered. It was enough to try to get my own money, being withheld by Chadbourne, to survive as a person and as a family, with a health history devastating and beyond my willingness to recount except under real need.

Sperry seems more beset. I was astonished upon finding, after joining Chadbourne at its invitation, Senior Partner Dunn was purported Sperry employee for purposes of building up a company pension in addition to what Chadbourne would provide in or out of Keogh or the like. Dunn enjoined me to secrecy. I protested. It all came to my breaking off with Chadbourne and leaving the firm in protest of the monstrous liabilities being built up by disqualification of the Sperry plan. My judgment was confirmed by published Revenue Rulings after I left Chadbourne as partner in such protest in the Spring of 1968. The matter involved writedowns of normally computed Chadbourne bills to create a "salary" for Dunn, then writeup for firm purposes, and, in course of time, false documentation. I became concerned as Dunn came on to "retirement" age, I inquired of Sperry and of Dunn and of the Internal Revenue Service; to no avail beyond evasion by Sperry and assertion by Dunn that confidence sealed me for all that had transpired while I was a Chadbourne partner. City Bar scotched that at once, when presented in early 1972. After more evasion from Sperry, and in April of 1974, Chadbourne at long last conceded there was no justification for what Dunn had done. With Watergate about to break full force, and with National Student Marketing and Meyerhofer

doctrine in course of development, and with the results of interaction of tax law and Securities Acts in style of 3M in plain prospect, I sued Dunn and Sperry.

Huston, Vice President-Law of Sperry, by letter of October 11, 1974 to my wife, declined comment on what Chadbourne was doing.

In January, Flynn of Arthur Young, in effect conceded no justification for what Dunn had done. His letter of January 30, 1975, said:

"* * * you asked about the letter dated January 8, 1975, together with enclosures, which you sent me 'bearing on the litigation of the Dunn matter of Sperry.' I advised you that I had turned them over to Mario Formchella, our Eastern Region Managing Partner, and Carl Liggio, our General Counsel. They have considered the substance of your remarks, and I have been advised by them that no comment to you is required or needed by them, or by Arthur Young & Company."

On February 21, 1975, I advised the Southern District Court, after pre-trial conference in another matter, that the Sperry matter ought to be decided one way or another, to permit presentation to the Court of Appeals for consideration of the appeal here; and I so apprised Mr. Warner on February 22. That case is still pending.

Anaconda proclaimed puzzlement at SCHTAAG; and then, on December 13, 1974, its in-house lawyer, Steinmetz, told me that it knew nothing of SCHTAAG except as learned from me.

That was the day Fletcher advised knowledge and participation, only to disavow just a month later.

American Brands stands silent.

So it is that Warner and Chadbourne have invoked as participants clients free of responsibility and availability of parties. Such aggregation of forces must not be permissible in our adversary dialectic system for resolving disputes judicially. Correction is in order.

Since the 7th of February there have been numerous press reports on the very important military aspects of the TWA sale of aircraft, which are to be rebuilt to military configuration by Boeing for purposes of the Iranian Airforce, with delivery no earlier than September. The linked Pan Am transaction is coming under increasing scrutiny, and the Iranians have shown disposition to bargain sharply in the whole matter, even suggesting abandonment of such elements of the transaction as may have transpired if found displeasing to the United States Government. Perhaps that is not much of a concession in light of requirements of Governmental approval in the weeks and months ahead.

I state so much only to indicate further the problems of action by Chadbourne in this matter for itself and for

persons it claims as clients, in some respects, e.g., Gulbenkian, without authority of the purported client.

If even a case illustrated the truth of the fact that no man can serve two masters, it is this. It would be far better if TWA stood aside from clients' affairs in this instance, as it has in so many others, for conflicts of interest, e.g., in the long-protracted Hughes litigation, and let normal processes of justice proceed.

I believe that Chadbourne ought, in the interests of justice, demonstrate that it at least now is not in its obstruction, state its position at this time, in light of presently known facts and state expressly and responsibly, as a firm, whether it wishes to pursue the matter, especially in the suddenly raised grievance aspects, or whether it wishes to specify, modify, or withdraw.

In this view, and to avoid encumbering the record, I refrain from including attachments, except clippings noted above, or even comments on the transcript, with this letter. Let Chadbourne advise where it now stands and let such matters await its action or suggestion of the Court, in whose service we are above all.

While the matter is in appeal status, surely neither Chadbourne nor any client would wish the added complication

of censure proceedings for me or for Warner or for Chadbourne. I maintain that such proceedings would be wrong as to me at any time, whatever the result on appeal; but do not take any position on what the Court might see fit to propose or do sua sponte as to Warner and Chadbourne.

I spare comments on bizarre aspects of the matter in State Court towards accounting by Chadbourne referred to by Warner, except to say that after falsely swearing and establishing in Southern District that that was identical with the Sperry case there, Warner and his brother-in-law Ingraham maintained in State Court that they were different. Respecting seal of file in Southern District, I suffered dismissal in State Court for not filing complaints in what I maintained would be breach of seal. That has yet to be resolved on appropriate presentation within the period of one year allowed by State law.

I write as I do for the Court's consideration; and have not filed a petition for rehearing, in the belief that the matter calls for reconsideration on facts at any relevant point in time rather than rehearing on some set of frozen facts.

I respectfully suggest that this Court be of appropriate assistance to the Court of Appeals in discharge of its functions of evidentiary proceedings, and by requiring that

144.
Warner and Chadbourne state whom they represent and in what;
and what are their charges against me, in light of what is
commonly known today; and some known only to Chadbourne and
cohorts.

Respectfully submitted,

John F. Costelloe

cc: Chadbourne, Parke, Whiteside & Wolff

U. S. JURY INDICTS EX-AIDE TO AGNEW

Singer Co. and 3 Others
Also Face Charges on
Campaign Violations

By BEN A. FRANKLIN
Special to The New York Times

BALTIMORE, March 6—A Federal grand jury here today indicted J. Walter Jones Jr., a former close personal and political associate of Spiro T. Agnew, along with the Singer Company of New York and three other persons, in connection with an alleged illegal \$10,000 contribution by Singer to the Nixon-Agnew re-election campaign in 1972.

Mr. Jones, now an Annapolis banker, was a central figure in the rise and fall of Mr. Agnew, a former Governor of Maryland who resigned as Vice President of the United States in October, 1973, in a deal to avoid prosecution for accepting contract kickbacks.

Mr. Jones, 52 years old, had previously been identified in court records here as a collection agent of illegal funds for Mr. Agnew, but he had not been indicted until today.

Mr. Jones's lawyer, Plato Catheris, reached by telephone in Washington, said that, "We will assert our innocence in court." The lawyer described the indictment of Mr. Jones as "the product of a two-year vendetta against him by the United States Attorney in Baltimore."

The other persons indicted were two former Maryland associates of Mr. Jones, John W. Steffey of Severna Park, Md., and James F. Fansen, a Baltimore lawyer, and Raymond A. Long, a Singer executive of Binghamton, N. Y.

Mr. Fansen, 47, told United States District Judge R. Dorsey Atkins late today that he was giving full cooperation to the Federal prosecutors, offering a plea of nolo contendere (no contest)—which he said would be changed to a plea of guilty if the court declined to accept it—and throwing himself on the mercy of the court.

Plea Is Declined

Judge Dorsey declined to accept any plea today, putting off a decision on the matter.

Singer, in a statement issued in New York, acknowledged that funds had been "diverted from the company in a disguised fashion for the purpose of making a political contribution" but said no corporate officers or directors had been aware of it. The statement went on:

"The United States Attorney contends that the company is responsible for acts of a non-officer employee which were not authorized by management and which violated company policy. The company intends to resist this effort to impose vicarious criminal liability upon it. It will plead not guilty and seek a prompt trial."

The indictment did not charge that top Singer executives were aware of the illegal campaign gift. United States Attorney George Beall told newsmen tonight that the indictment of the company was "important as an indicator that a company will not be insulated from prosecution simply because allegedly guilty employees were below the top management level."

The grand jury charged that Mr. Jones, as the chairman in 1972 of the Maryland Finance Committee to Re-elect the President [Mr. Nixon], had "procured" the illegal \$10,000 corporate contribution from Singer, through Mr. Long in the company's Silver Spring, Md., office, by "the wrongful use of the fear of financial and economic injury and under color of official right."

The prosecutor's office said that Mr. Jones had "instructed" Mr. Fansen to obtain the illegal contribution from Mr. Long by offering in return "access" and "favorable reception and consideration from the Republican Federal Administration" in obtaining contracts.

The Singer Company's sewing machine business now represents less than one-third of its varied activities, which include defense electronics, aircraft instrumentation, calculators, power tools, housing and air-conditioners.

The counts against Mr. Jones were one each of extortion, conspiracy to defraud the United States, soliciting and receiving an illegal corporate campaign contribution, and five others, alleging various violations of contribution reporting provisions of the law.

The Singer Company was charged with conspiracy to defraud the United States, violations of statutes prohibiting corporate campaign gifts and gifts by Government contractors, and of illegally concealing its contribution.

Accused in separate counts of approving and conveying the illegal contribution was Mr. Long, now the president of Singer's Simulation Products Division in Binghamton.

Mr. Fansen and Mr. Steffey, described in the indictment as minor agents of Mr. Jones in his 1972 fund-raising activities, were charged only with misdemeanor violations of the Federal campaign finance law. Mr. Steffey was treasurer of the 1972 Maryland Finance Committee to Re-elect the President.

New York Times, 3/9/75, Sec. 3, p. 1

How 3M Got Tangled Up in Politics

By MICHAEL C. JENSEN

ST. PAUL—Flanked by two sheriff's deputies, the assistant attorney general of Minnesota strode unannounced into the headquarters of the giant Minnesota Mining and Manufacturing Company, hurried to the 14th floor, and handed a search warrant to Harry Heltzer, the company's \$400,000-a-year chairman.

Minutes later the law officers seized a set of bulging manila folders labeled "Political Contributions" which contained explosive information on 3M's half-million-dollar illegal slush fund.

Richard Allyn, the legal officer who led the extraordinary raid in January, would later comment that it was just like "searching some house for drugs."

But of course it wasn't. Raids on corporations of any size are far from commonplace. Furthermore, 3M was not just another company. It was one of the nation's industrial behemoths, with about 80,000 employees and annual sales of nearly \$3-billion.

Over the years, its Scotch-brand tape had become a household word. It enjoyed an exemplary reputation in Minnesota and its political clout was enhanced by the fact that it helped finance the campaigns of a number of the leading politicians in both Minnesota and the nation.

The raid on 3M headquarters—which Mr. Heltzer later characterized as "high-handed"—was the single most dramatic event in a series of devastating blows to the company's reputation in recent months. The evidence that was unearthed by the assistant attorney general and other investigators has revealed that hundreds of thousands of dollars in corporate funds were "laundered" in Switzerland—represented as lawyers' fees

and insurance premiums—then returned to a safe in the office of 3M's chief financial officer.

The cash was doled out to scores of local, state and national politicians in blatant disregard by 3M of the law.

As a result of the illegal contributions, 3M has been bombarded with lawsuits and Government actions that have rocked the company and sent morale plummeting.

The story of 3M's fall from grace is a classic in the histo-

suite has been devastated, with virtually the entire top echelon wiped out.

Mr. Heltzer, 3M's 63-year-old chief executive, resigned under fire last month, after vowing for months that he would remain in his job. The company said he would continue as board chairman until May 13 when his term expired, but he has already given up his decision-making powers.

Irwin R. Hansen, who is 61, resigned last November

The Scotch Tape Saga: Laundered Funds, Loss of Face, Heavy Fines

ry of American business. It provides a case study of the techniques used by some corporations to bypass the nation's campaign funding laws. It also reveals much about the climate in which otherwise honorable and successful businessmen knowingly violate the law.

An examination of hundreds of pages of legal documents, testimony and internal reports—much of it previously unpublished—as well as interviews in Washington and St. Paul with 3M officials, law enforcement officers and attorneys, provided details on the complex affair.

3M and a number of its top officers already have pleaded guilty to charges leveled by the state of Minnesota and the Watergate Special Prosecutor, and have settled cases initiated by the Securities and Exchange Commission and a 3M stockholder. A Federal tax case is still pending.

The company's executive

from his position as chief financial officer. He still serves 3M as a "consultant" and maintains an office at the company, but he will not seek re-election to the board in May.

Bert S. Cross, who was chairman and chief executive of 3M from 1966 to 1970, and a board member thereafter, will not seek re-election to the board where he serves as chairman of the finance committee.

What was it that precipitated the spate of legal actions and the exodus from 3M's top ranks?

A Federal grand jury indictment handed up late in January alleged that during the early- and mid-nineteen-sixties Mr. Cross, then chairman, and Mr. Hansen, the chief financial officer, funneled cash into 3M's secret slush fund by withdrawing money from a corporate bank account.

The company money was transferred to a Swiss bank account, and the late Burgess

F. Geib, then a partner of the accounting firm of Haskins & Sells, allegedly conspired to cover up the transactions.

The grand jury said Mr. Geib authorized the acceptance of phony insurance premiums, and verified the amount of cash that was secretly returned to the safe in Mr. Hansen's 3M office in St. Paul.

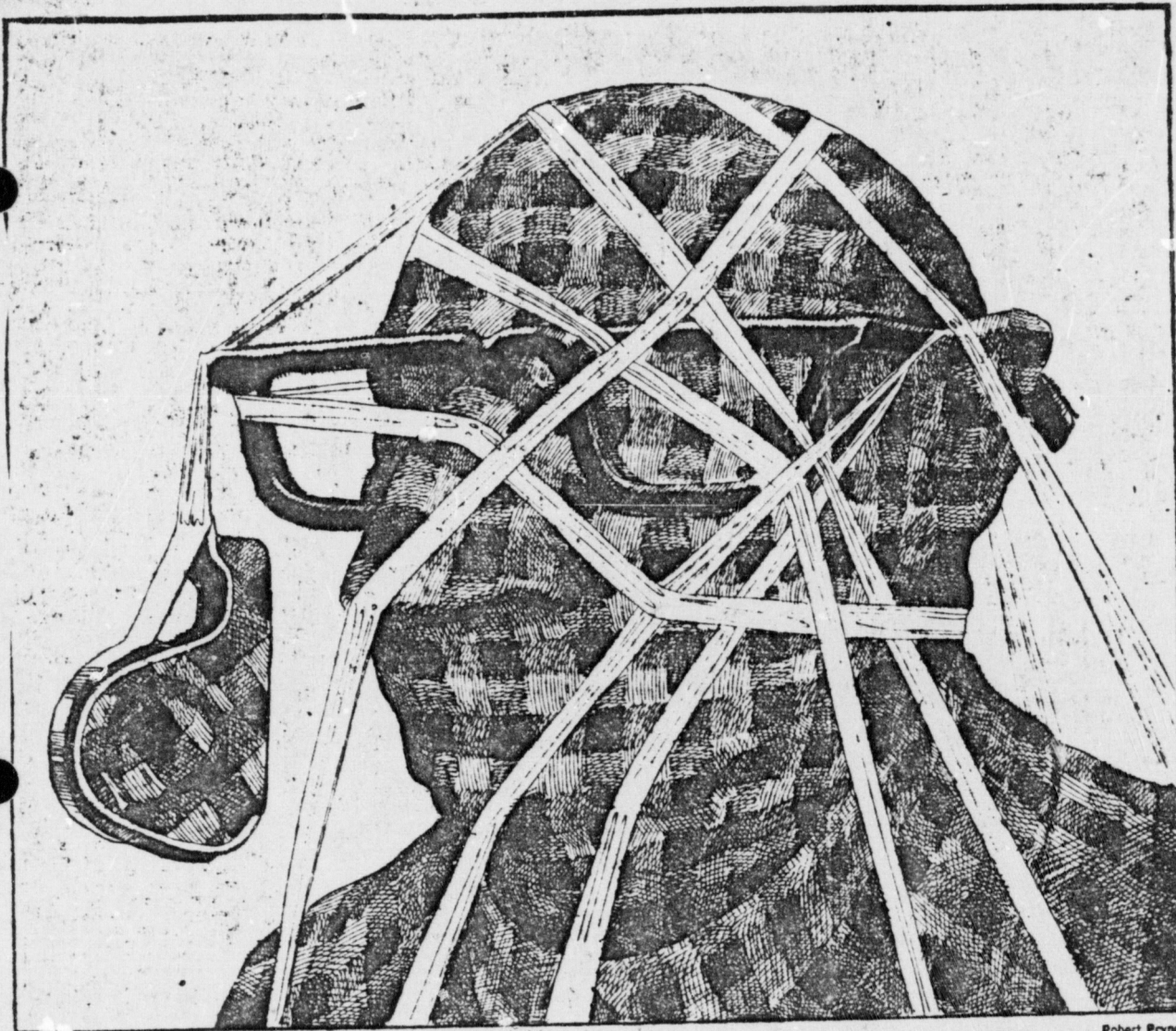
Another method of building up the fund, the indictment said, was a series of spurious payments to a Dr. L. Gutstein, a Swiss attorney, for legal services that were never rendered. Dr. Gutstein allegedly returned the cash to Mr. Hansen, and false bookkeeping entries again concealed the true purpose of the payments.

To illustrate how the scheme worked, Government investigators traced one specific series of transactions. It allegedly took place in August, 1963, when Mr. Hansen was said to have wired \$115,800 of 3M funds to the company's Swiss bank account, which carried the number 782.900.01 M. The company claimed the \$115,300 as a deduction in its Federal income tax return for 1963, identifying it as an insurance expense.

During 1964, according to the indictment, Mr. Hansen made six currency withdrawals totaling \$67,200 from the same Swiss account, placing the cash in the safe in his office. He also allegedly disbursed at least \$33,800 from the safe "for the purpose of making political contributions."

The grand jury also charged that in 1968 or 1969 Mr. Hansen personally went to Switzerland and collected \$50,000 in cash from Dr. Gutstein.

The Securities and Exchange Commission on Jan. 30 said in filing civil charges against 3M that about \$489,000 in cash from the slush fund was ultimately contributed to political campaigns,



Robert Pryor

"in violation of, and circumvention of Federal campaign laws which prohibit corporate contributions."

Late last December, in a financial document filed with the S.E.C., 3M had admitted publicly the broad outlines of its wrongdoing.

"Between 1963 and 1969," it said, "the principal sum of \$634,000 was transferred

from corporate sources to the fund. . . . The last year in which corporate money was transferred to the fund was 1969; in 1973 the fund was dissolved. A balance of \$167,500, which included the remainder in the fund and contribution refunds of \$31,500 was entered as income on the company books."

The company also admitted

that it faced possible claims for additional Federal and state taxes, penalties and interest, which could amount to \$11-million. The figure was subsequently revised to \$9-million.

How was the money doled out? A report issued by the Minnesota attorney general said that Wilbur M. Bennett, 3M's director of civic affairs,

"screened the requests and sought the approval of the chairman of the board.

"If the chairman approved of the contribution, [Mr.] Bennett took the request to [Mr.] Hansen, who was the custodian of the fund. [Mr.] Hansen gave [Mr.] Bennett cash from a safe in his office.

Continued on page 16

Continued from page 1

[Mr.] Bennett disbursed the money to the political candidates and committees."

In some instances, Mr. Bennett allegedly obtained a personal check from a 3M executive, forwarded that check to a political candidate or committee, then gave the executive cash from the slush fund to cover the amount of the personal check.

One of the executives who was said to have been reimbursed by Mr. Bennett was 3M chairman Harry Heltzer. According to an internal memorandum from the Minnesota attorney general's office, Mr. Heltzer admitted to the state's legal authorities that he sometimes participated in such exchanges.

Mr. Heltzer reportedly told the investigators that he was under the impression at first that the money in the slush fund was from "private sources," but later began to suspect that it was not.

"He candidly admitted that he had some suspicions beforehand, but he did not pursue them, because he was afraid of what he might find out," the memorandum said.

Mr. Heltzer said last week in an interview that he regretted what he called both an "error" and a "mistake in judgment."

"I should have been a lot smarter than I was," he said. "The minute I was first exposed to the fact that the

thing [political fund] was there, I should have done something about it. By just not asking the proper questions at the time, I kind of fell into what seemed to be the practice of the times."

According to Mr. Allyn, assistant to Minnesota's attorney general Warren Spannaus, much of the evidence relating to the secret slush fund was obtained during the January raid on 3M headquarters.

"We found the big thing we were looking for," he said in an interview, "and that was the pages from a big ledger book kept by [Mr.] Bennett that had every con-

tribution made from '63 on." The ledger also contained entries for some of the laundered money that was handled by Mr. Hansen, Mr. Allyn said.

The first illegal 3M contribution to surface was a \$30,000 gift to former President Nixon's re-election campaign in 1972. That gift was collected personally by Maurice H. Stans, former Secretary of Commerce under President Nixon, who was serving in 1972 as chairman of the Finance Committee to Re-Elect the President.

Mr. Stans accepted 3M's invitation to fly to Minnesota in a 3M plane, and to stay at the lavish 3M-suite in the St. Paul Hilton.

In a "Dear Harry" letter to Mr. Heltzer before the visit, Mr. Stans said "we will take advantage of the transportation plans that you outline in your letter." He added that he and his wife Kathleen would "also enjoy the suite at the Hilton where I remember staying two years ago."

Although the contribution to the Nixon campaign was the most dramatic of the 3M gifts, the decade-long pattern crossed party lines.

According to 3M's files, most of the contributions were for a few hundred dollars, but an occasional gift of \$10,000 to \$15,000 was offered to organizations such as the Minnesota Republican Party \$100-a-plate Dinner Committee or the state's Republican Finance Committee.

Democrats, including Representative Wilbur Mills of Arkansas and Senator Hubert Humphrey of Minnesota also received donations, and, in 1971, \$3,000 was given to the Democratic Congressional Incumbents Dinner.

Although any account of 3M's illegal behavior over a 10-year period properly focuses on the establishment and disbursement of the slush fund cash, a fascinating sidelight is the manner in which the company responded to the situation once the existence of the fund became known.

An inside look at the company's response was provided by Joseph W. Barr, an executive who shuttled back and forth between the Government and private sector.

Last July, even as he was scrambling to keep the beleaguered Franklin National Bank afloat until a buyer could be found, Mr. Barr was making a sworn statement to Alan B. Morrison, a Washington attorney associated with Ralph Nader, the consumer activist.

Mr. Morrison represented Judith Bonderman, a 3M stockholder who was suing

to force reimbursement of the illegal contributions to the company.

Mr. Barr had been a member of 3M's board of directors since 1970 and after the campaign funding scandal exploded he was named chairman of an internal subcommittee of the 3M board to investigate and recommend a course of action.

The other members of the subcommittee were Peter G. Peterson, chairman of the investment banking firm of Lehman Brothers, who held several high positions in the Nixon Administration; James Binger, a former chairman of Honeywell, Inc., and husband of the daughter of William L. McKnight, a former 3M chairman, and John G. Ordway Jr., a trustee of the Ordway Trust, which held millions of shares of 3M stock.

The subcommittee met twice and heard reports by 3M's attorney Leonard Keyes. According to Mr. Barr, there was never a question of whether the company had broken the law. Clearly it had.

The debate centered on whether the top echelon of the company should be asked to reimburse 3M for the illegal contributions, and the likelihood that they would feel they had to resign under those circumstances.

The posture that Mr. Barr struck in his sworn testimony was that the company might fall apart if the subcommittee forced the resignation of Mr. Heltzer, Mr. Hansen and Mr. Cross.

He said that Raymond H. Herzog, 3M's president, was asked whether he could hold the company together.

"His answer was he did not think that he could, or he could do it only with great difficulty — but that certainly the best interests of shareholders and employees would be drastically affected by such action, in his opinion," Mr. Barr said.

According to Mr. Barr's testimony, Mr. Peterson argued for stronger action than the rest of the subcommittee. Mr. Barr said Mr. Peterson suggested at one point that the officials involved in the illegal contributions should repay the company for the amounts involved.

It was concluded, however, that such a request would be denied by the individuals, because they would in effect be admitting guilt, and then opening themselves up to private litigation.

Mr. Barr said that he relied heavily on 3M's help in the investigation.

"When you're an outside director of a company as big as 3M, you try to get your arms around it, but you have to depend very heavily on the judgment of the inside directors and officers," he said. The most persuasive argument, Mr. Barr said, was the advice of high company officers that they could not survive the exodus of three principal officials. "Maybe they were wrong," he said, "and maybe we were wrong."

At the end of its investigation, the subcommittee offered a resolution at 3M's February, 1974, board meeting, which, in effect, deplored what had happened but recommended that no action be taken by the company against the officers involved.

Only Mr. Peterson voted against the resolution, and against a companion resolution to sharply limit the company's public disclosure of illegal campaign contributions.

Mr. Peterson declined to give the reason for his votes, except to say that his views were confirmed by his counsel, but he provided a written statement which confirmed that he "did not see eye to eye" with his fellow directors.

Today, of course, Mr. Herzog, as chief executive, hopes to put the campaign financing scandal behind him, just as the Republicans in Washington are trying to put Watergate behind them. But the stream of lawsuits and Government actions has created a steady outpouring of adverse publicity. They have included:

¶Criminal charges by the

state of Minnesota that 3M made a number of illegal political contributions with the cash coming from a corporate slush fund containing nearly \$635,000. 3M pleaded guilty and was fined \$5,000. Mr. Hansen, its chief financial officer, pleaded guilty and was fined \$3,000.

¶Criminal charges by the Watergate Special Prosecutor that 3M and Mr. Heltzer, its chairman, made an illegal contribution of \$30,000 to former President Nixon's 1972 re-election campaign. Both pleaded guilty. 3M was fined \$3,000 and Mr. Heltzer, \$500.

Civil charges by the Securities and Exchange Commission that 3M, Mr. Heltzer, Mr. Hansen and Mr. Cross violated Federal securities laws, partly by disguising illegal political contributions as bona fide business expenses. 3M and its officials consented to the S.E.C. action, in effect pleading nolo contendere. They also agreed to appoint an outside agent

to examine 3M's books.

Indictment by a Federal grand jury of 3M, Mr. Hansen and Mr. Cross on Federal income tax charges arising from the illegal fund. If convicted, Mr. Hansen could face an 11-year jail sentence and fines totaling \$20,000, and Mr. Cross could face a 5-year sentence and \$10,000 in fines, according to the I.R.S. Both men have pleaded not guilty.

A civil lawsuit by Judith Bonderman, the 3M stockholder who sought reimbursement by 3M officials of company funds illegally donated to politicians. Five key 3M figures agreed, subject to approval by a Federal judge, to settle the suit by paying the company \$475,000. They were Mr. Heltzer, Mr. Hansen, Mr. Cross, Mr. Bennett and William McKnight. The largest settlement—\$300,000—was made by former chairman McKnight, although he was not named in the suit. The other men "don't have the same kind of money I have, so I agreed to assume \$300,000 of the settlement," Mr. McKnight explained in an interview.

As for current political activity, Mr. Bennett said it had been sharply curtailed. "As you can well imagine," he said in an interview, "everything is sort of in limbo. Requests still come in and I review them, but our activities in this area have gone down to practically nothing."

3M officials point proudly to the long and successful past of the company, which was founded in 1902. 3M initially concentrated on manufacturing sandpaper and other abrasives.

In the late nineteen-twenties, Scotch tape was developed and along with reflective roadside signs became an important product, as did magnetic recording tape, office copiers and a host of other consumer and industrial products. 3M currently manufactures thousands of products, with tape and allied products accounting for only about 16 per cent of its sales.

The company has a long history of paternalistic operations, including pleasant working conditions, community involvement, and such amenities as a country club for its employees.

The mining part of the 3M name is an anachronism. The company was founded to mine a vein of corundum, a mineral 3M hoped to use in sandpaper. The deposit on Minnesota's North Shore proved to be useless, however, and today 3M has no mining operations.

The company's performance currently is under close scrutiny by the financial community. Sales and profits have slipped in recent months. In the fourth quarter of last year, 3M's net earnings dropped nearly 18 per cent to 56 cents a share, from 68 cents a year earlier.

The company's stock has slipped from a high of more than \$91 in 1973 and \$80 last year to its current price of about \$56. The company earned \$2.66 a share last year, up from \$2.62 a share in 1973, but many analysts believe it will earn 15 or 20 cents a share less this year.

Despite the muted financial outlook, 3M's new management seems determined to rise above the mistakes of the old. Less than a week ago the company announced that it was replacing Haskins & Sells, whose former partner was implicated in the coverup of the Swiss laundering operation. A replacement has not yet been named.

"We did the last bit of putting the [campaign funding] thing behind us with our action on the auditors," Mr. Herzog said in an interview. "As far as I'm concerned that ends the political part. The people who were involved in it are now gone. We have done our surgery and it's been pretty brutal, but it's done."

Meanwhile, as Mr. Herzog told The Minneapolis Tribune, "You can't run down all the good things this company has done over 50 years because of one mistake. All of a sudden, 80,000 people don't become louses."

They Authorized It



Bert S. Cross
Former chairman



Harry Heltzer
Chairman

In Charge Now



Raymond H. Herzog
President, chief executive

Kept It in Safe



Irwin R. Hansen
Former Financial Head Officer

Paid \$300,000 in A Settlement



William L. McKnight
Former chairman

Disbursed It



Wilbur M. Bennett
Civic affairs director

New York Times, 3/9/75, Sec. 4, p. 5

A Suicide Note Accuses C.A.B. Chairman

When William Gingery, chief of the bureau of enforcement of the Civil Aeronautics Board, shot himself last month, he left an unusual legacy. His suicide note was 10 pages long, and it made serious accusations against Richard J. O'Melia, the acting chairman of the C.A.B.

Mr. O'Melia preceded Mr. Gingery in the enforcement job. The suicide note reportedly said that when he served in that capacity, Mr. O'Melia, in October, 1973, ended pending investigations into several domestic airlines. The closed inquiries concerned illegal contributions to former President Nixon's 1972 campaign. A month later, Mr. Nixon named Mr. O'Melia a member of the C.A.B. and its acting chairman.

Mr. O'Melia has denied the charges, but last week a Senate investigator and a Federal law enforcement official gave statements to the press in Washington supporting the allegations in Mr. Gingery's letter.

It is not known if the airlines involved are those that have since acknowledged illegal contributions, admissions made during the Watergate investigations, or concern still undisclosed cases.

That may become clear during hearings being conducted by the Senate Subcommittee on Administrative Practice and Procedure. Mr. Gingery killed himself two days before he was scheduled to appear before the subcommittee, but sent it a copy of his suicide note.

March 12, 1975

The Honorable Orrin G. Judd
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: John F. Costelloe v. T. W. A.
75-C-157

My dear Judge Judd:

Here is a copy of material received from Chambers of Judge Conner yesterday about the Sperry case which was referred to in the meeting in Chambers on February 7.

I am told that the order referred to as being of December 20 did not exist and that action was taken March 5. The list of materials is incomplete. It omits the following items:

1. Affidavit of Harold L. Warner, Jr., in Opposition to Plaintiff's Motion for Correction of Order of December 10, 1974, 12/30/74.
2. Affidavit of John A. Huston in Opposition to Plaintiff's Motion for Correction of Order of December 10, 1974, 12/30/74.

I understand from informal conversation that the listed items may not have been considered in decision. If so, I think it unfortunate, for they show intransigence of Warner in insisting that Sperry had only 5 vice presidents where it actually had 50, a matter which should have been controlling on the issue of diversity. I hope to see Judge Conner's order tomorrow and may then comment on the omission.

I now enclose a copy of Freshfields' letter of February 24, and of the Wall Street Journal of March 3 referred to in my letter to you of March 10.

Mr. Warner has agreed that it would be well to send to Judge Conner a copy of the transcript in Chambers. I would like to send to Judge Conner a copy of my letter to you of last Monday, and to send to you a copy of the materials listed, to help put into perspective the claims and testimony at the meeting on February 7.

Respectfully submitted,

John F. Costelloe

cc: Judge Conner, Chadbourne, Parke, Whiteside & Wolff

ATTACHMENT 1 TO AFOREGOING LETTER DATED 3/12/75

UNITED STATES COURTHOUSE
NEW YORK, NEW YORK 10007

WILLIAM C. CONNER
UNITED STATES DISTRICT JUDGE

March 10, 1975

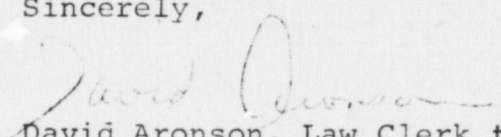
John F. Costelloe, Esq.
216 Little Neck Road
Centerport, New York 11721

Re: John F. Costelloe v. Sperry
Rand Corporation and
Stannard Dunn
74 Civ. 2244

Dear Mr. Costelloe:

Pursuant to Judge Conner's order dated
March 5, 1975, enclosed please find a Schedule
of the contents of the file in the above matter,
sealed by order of Judge Conner dated July 1, 1974.

Sincerely,


David Aronson, Law Clerk to
William C. Conner

DA:lt
Enclosure

cc: Chadbourne, Parke,
Whiteside & Wolff, Esqs.

UNITED STATES COURTHOUSE
NEW YORK, NEW YORK 10007

WILLIAM C. CONNER
UNITED STATES DISTRICT JUDGE

JOHN F. COSTELLOE v.
SPERRY RAND CORPORATION
and STANNARD DUNN
74 Civ. 2244

SCHEDULE OF CONTENTS
OF SEALED FILE

<u>Year</u>	<u>Date</u>	<u>Description</u>
1974	May 23	Complaint filed
	June 5	Proof of service filed
	June 13	Affidavit of Stannard Dunn in support of motion for injunction and order dismissing complaint and request that the file be sealed
	June 13	Affidavit of John A. Huston in support of motion for order dismissing the complaint and request that the file be sealed
	June 13	Defendants' memorandum in support of motion to dismiss complaint
	Undated	Notice of motion by defendants for (1) an injunction (2) to dismiss complaint (3) to seal file
	June 27	Memorandum in opposition to motions for permanent injunctions, etc., against Costelloe, for defendants Sperry & Dunn & their lawyers, Chadbourne Parke Whiteside & Wolff & Clients American Brands, Anaconda, Calouste Gulbenkian Foundation of Lisbon, Portugal, & Transworld Airlines, & each & every client of Chadbourne at all times commencing March 1, 1958, named or not, as to any & all grievances stated & unstated, and attached affidavits
	July 1	Order sealing file
	July 12	Plaintiff's motion for temporary restraining order
	Undated	Bond executed by Gertrude Frances Costelloe (amount not filled in)
	July 14	Letter from Costelloe to Pamela Ostrager, law clerk

Schedule of Contents
of Sealed File

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Costelloe v. Sperry Rand
Corporation, et ano.
74 Civ. 2244Year
1974

<u>Date</u>	<u>Description</u>
July 23	Memorandum and order granting defendants' motion to dismiss the complaint
August 2	Sperry proxy statements - Exhibit C-2 to memorandum in support of motion for reargument
August 2	Memorandum in support of motion for reargument
August 2	Plaintiff's motion for reargument
August 9	Defendants' memorandum in opposition to plaintiff's motion for reargument
August 12	Supplemental memorandum in support of motion for reargument and in opposition to defendants' memorandum
August 14	Letter from Costelloe to Pamela Ostrager, law clerk
August 21	Letter from Costelloe to Judge Conner
August 21	Communication from Costelloe to Chadbourne, Park, Whiteside & Wolff
October 2	Letter from Costelloe to Judge Conner
October 11	Memorandum and order denying plaintiff's motion to reargue without prejudice to its renewal
October 16	Plaintiff's request for extension of time under Rule 6(b)
October 23	Supplemental affidavit of Stannard Dunn
October 24	Defendants' letter to Judge Conner
November 21	Affidavit of Costelloe
November 21	Plaintiff's attachment P to affidavit
November 21	Memorandum accompanying affidavit of expected proof of diversity of citizenship between plaintiff and defendant Sperry
November 21	Attachments A-E to plaintiff's affidavit
November 27	Defendants' memorandum in opposition to plaintiff's memorandum accompanying affidavit of expected proof of diversity of citizenship between plaintiff and defendant Sperry
December 10	Memorandum and order denying plaintiff's renewed motion to reargue
December 10	Supplemental affidavit of plaintiff
December 10	Memorandum in support, submitted by plaintiff
December 10	Letter from Judge Conner to parties advising of revised memorandum of December 10, 1974 and sending copies

Schedule of Contents
of Sealed File

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Costelloe v. Sperry Rand
Corporation, et ano.
74 Civ. 2244Year
1974Date

December 20

Description

Memorandum in support of motions under
FRCP 60(b) for correction inadvertence
induced by misrepresentations of advocate
Warner; and under FRCP 50(e), of plaintiff
Plaintiff's notice of motion pursuant to
Rule 65(b) and 59(e);

December 20

December 20

Order denying motion dated December 20,
1974 with respect to items 1-6 and
granting it with respect to item 7

1975

January 3

Costelloe affidavit in response to
affidavit dated 12/20/74

January 9

Plaintiff's letter to Lucy Torre, secretary

January 14

Plaintiff's affidavit in support of motion

January 20

Plaintiff's letter to Judge Conner with
accompanying attachments

January 31

Plaintiff's letter to Judge Conner with
accompanying attachments

Wall Street Journal, 3/3/75, p. 1

Jumbo-Jet Jitters

Story of DC10 Defects Raises Serious Doubts About Safety Policies

The Hazard of Cargo Door Was Known Before Crash, Emerging Details Show

'Extremely Remote' Danger?

By ROY J. HARRIS JR.

Staff Reporter of THE WALL STREET JOURNAL

Crowded with 346 passengers and crew members, the Turkish Airlines DC10 rose smoothly from Orly Airport in Paris, bound for London. Terror came at 12,000 feet.

The door to the bulk-cargo compartment at the bottom rear section of the fuselage wasn't properly latched. As the aircraft pressurized during climb and the atmospheric pressure outside decreased, the door was under mounting strain. Suddenly it blew off the craft.

Immediately, explosive decompression occurred. As the air in the cargo hold beneath the passenger section rushed out, the floor between the two areas was sucked and pushed downward. It buckled toward the rear of the cabin, collapsing toward the open hatch. Six passengers, still strapped in their seats, were blown out while dust, debris and loose articles rushed through the passenger section in a roaring howl of wind.

In the cockpit, the captain grappled with the controls but it was no use. The collapsing floor had cut or fouled control lines running beneath it, and the huge trijet nosed over and fell into a wood outside Paris. There were no survivors of the worst crash in the history of commercial aviation.

Investigation and Lawsuits

This disaster, which occurred a year ago today, spawned two congressional investigations and a fusillade of lawsuits from relatives of at least 200 of the victims against the builder, McDonnell Douglas Corp.; the subcontractor that built the fuselage and doors, General Dynamics Corp.; the operator, Turkish Airlines, and the U.S. government's safety watchdog, the Federal Aviation Administration. The potential liability of the defendants runs well into hundreds of millions of dollars.

How could the disaster have happened, given all the supposed safeguards governing the design and testing of commercial airliners?

The history of the cargo-door development offers a few clues. It is an incomplete history: federal Judge Peirson Hall in Los Angeles, who is handling the combined crash suits, has sealed all pretrial depositions and records that bear on the case. In response, the FAA has put under wraps even public documents relating to the safety of the DC10.

But recently released documents and testimony from the congressional investigations, together with interviews and records from other sources, lead to an inescapable conclusion—that numerous indications of possible defects in the door-locking mechanism came to light long before the Orly tragedy. Yet through bumbling, delay and errors in judgment, a potential hazard to millions of passengers was allowed to continue. What is even more alarming, the story of the DC10 door casts doubt on the reliability of the whole regulatory process in which manufacturers, the FAA and airlines are supposed to work for maximum aircraft safety.

Failure During a Test

The story begins in May 1969, two years before the DC10 was certified for use. Engineers at the Convair unit of General Dynamics, responsible for engineering and construction of the fuselage and doors, drew up a "failure mode and effect analysis" predicting what would happen if a cargo door failed in flight. The analysis, sent to McDonnell Douglas in August 1969, concluded that the "door will fully open, resulting in a sudden decompression and possibly structural failure of the floor"—precisely what happened over Orly almost five years later.

In May 1970, McDonnell Douglas itself got confirmation of the analysis while making a pressurization test of a fuselage on the ground—a cargo door blew open and the floor partially collapsed. The company quickly moved to forestall the danger of explosive decompression.

The doors at that time were closed and latched by electric motors. After closure, ground personnel could turn a handle engaging a row of lock pins; this provided additional locking and also served as an indicator that the hatch was truly shut, for the lock pins weren't supposed to engage unless it was.

Alerted by the blowout during the ground test, McDonnell Douglas ordered that a small vent door be built into each cargo hatch. This vent door was to be closed by the same handle that moved the lock pins. If the lock pins failed to engage—indicating the main door wasn't firmly shut—the vent door would remain open and the plane couldn't be pressurized. Thus, the worst that could happen, the company thought, was that a plane with a faulty door closure would have to return to the airport.

A Chance in a Billion

With this change incorporated, the DC10 was presented for FAA certification as a safe aircraft. One of the FAA-certification requirements is that key systems and parts have backups to take over if the primary ones fail. An exception can be granted if the manufacturer demonstrates a system to be so reliable that the possibility of failure is "extremely remote"—defined by the FAA and manufacturers alike as "one chance in a billion."

Because controls run the length of the DC10 passenger floor, the FAA fail-safe standard indicated that the floor had to have sufficient venting built into it to prevent collapse if the cargo hold below suddenly decompressed. But the venting that actually existed wasn't nearly enough to handle the decompression that would occur if a cargo door blew off completely. So, the

FAA accepted instead the thesis that a door failure itself was "extremely remote."

In a report prepared after the Orly crash to assess the FAA's role in certifying the DC10, Oscar Bakke, then FAA associate administrator for aviation safety and now a transportation consultant for Newark, N.J., criticized his own agency's decision. The FAA, Mr. Bakke implied, relied too heavily on the idea that the vent door couldn't be closed if the main door wasn't truly closed first. It was thought, the report said, "that the vent door and handle would, by virtue of direct mechanical linkage, stay open if the corresponding (cargo) door was not fully latched, thus providing a visual means of determining (cargo) door-latch security." (One FAA regulation requires "direct visual inspection" of locking mechanisms, but in the certified DC10 there was no way actually to observe the latches or lock pins.)

Certifying agents did try to force the vent door shut while the main hatch was closed, and couldn't do it. They concluded that "it was not within the expected strength of ground-service personnel to force the vent-door handle closed when the door-latch safety pins were blocked from proper placement by unsecured latches."

The FAA asked for and got from McDonnell Douglas fault analyses and other safety-test results on 32 key DC10 systems. But it never asked for this material on the cargo-door locking mechanisms.

The DC10 was certified by the FAA in July 1971 and began to take its place in world air fleets. Then, in June 1972, a ramp-service agent in Detroit had trouble closing the vent door on an American Airlines DC10. He did what the FAA agents couldn't do: forced it shut with his knee. A mechanic cleared the plane, and it took off. At just below 12,000 feet, over Windsor, Ontario, the door blew and part of the passenger floor collapsed toward the open hatch, badly fouling the controls. The cockpit crew retained enough control to land safely back in Detroit with only 11 minor injuries among the 67 passengers and crew, most of which occurred during the evacuation of the plane after landing.

From ADs to SBs

Alarmed, the FAA's western regional headquarters began preparing two "airworthiness directives," or ADs, for the DC10. They would have required two changes designed by McDonnell Douglas—installation of a small viewing window so that ground personnel could actually see whether the lock pins were engaged, and the addition of new parts to the mechanism so that the vent door couldn't be forced closed.

Manufacturers don't like ADs. They are legally enforceable orders and they are public, being printed in the Federal Register. And McDonnell Douglas didn't get any ADs this time. Instead, John H. Shaffer, then FAA administrator, reached what has been called in both congressional hearings "a gentlemen's agreement" with an executive of Douglas Aircraft, the McDonnell Douglas unit that built the plane. Mr. Shaffer said that the change needed on the door's lock was so basic ("a piece of aluminum . . . about the size of two silver dollars") that it could be made quickly and easily by "service bulletins," or SBs. These aren't legally enforceable orders and they aren't public.

SBs are issued by the manufacturer to airline customers. In June 1972 McDonnell Douglas informed its DC10 owners of the view-window change in an "alert" SB, a notice on blue paper that is usually reserved for important safety-related items. But the change dealing with the lock parts was issued in July as a standard SB on white paper saying that compliance was "recommended"—the same kind of treatment that revisions on such items as curtain rods and toilet seats would get. Some planes weren't modified under this notice for nearly a year; one wasn't modified until after the Paris crash almost two years later.

The Applegate Memo

(McDonnell Douglas says it made the decision to issue a standard SB for the door mechanism change because the "urgency . . . was not as great" as for the window installation, which made it possible to confirm visually that the lock was closed.)

While all this was going on, F. Daniel Applegate, now an engineering director in San Diego for the Convair unit of General Dynamics, pondered problems of the door that his company was building. In a memorandum dated June 27, 1972, less than three weeks after the Windsor incident, he called the vent-door change "a Band-Aid fix" and said McDonnell Douglas had conducted "a progressive degradation of the fundamental safety of the cargo-door latch system. . . ."

The Applegate memorandum said that

what should have been done instead was to strengthen the floor and to install blowout panels in it to guard against collapse. After the floor collapse during the 1970 fuselage test, he wrote, Convair and Douglas discussed installing such panels but Douglas's "unilateral decision to add vent doors on the cargo hatches instead 'failed to correct the inherent DC10 catastrophic failure mode' in the floor. He added that Douglas should be persuaded to make the floor changes before the FAA ordered the DC10 grounded.

Mr. Applegate also wrote: "It seems to me inevitable that, in the 20 years ahead of us, DC10 cargo doors will come open and cargo compartments will experience decompression for other reasons and I expect this to usually result in loss of the airplane." The floor changes would be costly, he noted, but "may well be less expensive than the cost of damages resulting from the loss of one plane-load of people."

There are puzzling aspects to what seems a deadly accurate prophecy. For one thing, the memo isn't addressed to anyone. Mr. Applegate says that he wrote it on his own, without request, "just to express my own thoughts over a period of years." He says that some others saw it, but he doesn't remember who. General Dynamics declines to discuss the memo or any other aspect of the DC10 case, noting that it is a party to litigation.

John Brizendine, president of Douglas Aircraft and director of the DC10 program, says flatly that the Applegate memo was never sent to his company nor were its contents discussed between the two companies. As for the implication that McDonnell Douglas cut corners to save money, he declares: "I would guess that we have probably spent about \$200 million improving the product (the whole DC10). Money we were not required to spend. To accuse us of cutting corners on safety just to save a few bucks—no way."

Safety Recommendations

(The Applegate memo also contends that changes to the locking mechanism made when the vent door was added were designed almost entirely by Douglas, with Convair supplying only a single adviser-engineer. Mr. Brizendine says that his company provided only a "conceptual" design and that Convair did the final one.)

In early July 1972 the National Transportation Safety Board, a government agency charged with investigating civil-aviation accidents, made two recommendations stemming from its investigation, then in progress, of the Windsor incident. It said that the FAA should require a foolproof cargo-door locking mechanism—and additional venting in the passenger floor to prevent collapse from decompression in the cargo hold.

NTSB has no power to order FAA to do anything, and Administrator Shaffer kicked off the NTSB recommendation with a letter that read in part: "While a preliminary investigation indicates that it may not be feasible to provide complete venting . . . your recommendations will be considered with respect to further action taken." To this day, the FAA has never ordered more floor venting; McDonnell Douglas has voluntarily announced that it will add more venting on new planes delivered later this year. The old ones have the same floor.

(The floors can be affected by occurrences other than cargo doors blowing off. This question of aircraft-floor design, which also applies to the Boeing 747 and the Lockheed L1011, is still under study by the aircraft-manufacturing industry.)

Unmodified Doors

Thus, the crucial safety questions raised by the Windsor incident were answered only by the McDonnell Douglas service bulletins. But the FAA obviously was anxious. Numerous letters were exchanged between the agency and the manufacturer over the next couple of years. One in February 1974, just weeks before Turkish Airlines flight 905 met disaster, asked the company for "your views on explosive decompression effects" and sought an analysis—"as would be required of new aircraft"—proving that cargo-door blowout was extremely improbable. The company replied that questions raised in the FAA letter needed "much clarification," pleaded that the company didn't have the available manpower to turn out such a report and declared that it wasn't "in a position to accept this burden alone." McDonnell Douglas suggested that the FAA itself fund the study because, it contended, the results also would apply to the jumbo jets made by other companies.

Meanwhile, passengers were booking seats aboard flight 905. But at that point no one realized that the aircraft making that flight hadn't been fully modified under the

SBs. It lacked at least one of the additional parts in its cargo doors that supposedly would have made it impossible to force the vent door shut.

McDonnell Douglas manufacturing records show, however, that the lock fix was made; the plane—which wasn't delivered until December 1972—was still on the production lines when the SBs came out, and the company itself was responsible for the needed modifications. How could the door lack the fix although the records show otherwise? Mr. Brizendine says that he has made every effort to find out, without suc-

Following the crash of flight 905, the FAA issued ADs on the alterations to the door, and all DC10s have been checked for them. Mr. Brizendine has insisted that in any case the door on the Turkish Airlines plane was "absolutely safe had it been operated, closed and latched correctly." This doesn't seem to satisfy the FAA standard of "extreme remoteness," however, since that standard takes into account the likelihood of human error. Such errors may have been more common than anyone suspected; the FAA report says that at least five airlines had repeated problems closing and latching the doors.

Unanswered questions abound. Has the Orly tragedy led to overhaul of FAA procedures and standards? The agency won't say. Did Turkish Airlines, as some industry sources have hinted, make a modification of its own, one that made it easier to close the door improperly? Investigators found a hole drilled in it where no hole was supposed to be, but the final report of the crash investigation conducted by French authorities isn't out yet.

The Approach to Safety

Who's to blame, if there is blame to be attached? Besides all the crash suits against the manufacturers, the FAA and the airline, these organizations are involved in countersuits against each other. It will probably take years for the legal dust to settle. And even when it does, any final agreement could be out of court, and thus at least partially shielded from the public eye.

A larger problem, however, is the adequacy of the system of regulation under which the DC10 was certified. Some authorities believe that the secrecy or semisecrecy that shrouds this process is unhealthy. One is Charles O. Miller, former chief of the Bureau of Aviation Safety of the National Transportation Safety Board. He says that the behind-the-scenes dickering between FAA and the manufacturers amounts to "an unplanned, unsystematic approach to safety."

He says that both the FAA and the manufacturers have at times disregarded the advice of safety experts, without the cold light of public scrutiny being thrown on their decisions to do so. And he contends that current safety policy—which he says tends to provide minimum safety standards and then lets a company decide how safe the plane should be beyond that—is inadequate.

Oscar Bakke, who prepared the FAA report, says that the FAA safety staff over the years hasn't grown—either in size or in expertise—to handle such planes as the DC10. "With each new sophisticated design, the FAA samples a smaller piece of the engineering that goes into that aircraft," he claims. "By law, we have created a total system of aircraft design and certification," he adds, but it contains statistical possibilities for flaws that need a "continuous, highly disciplined system of review" that doesn't exist now. Without FAA organizational changes, problems like those with the DC10 "could very well" happen again, according to Mr. Bakke. (He also disclosed that in a visit to Turkey last year, the Turkish government "scolded the FAA" for not issuing an airworthiness directive on the vent-door change made after the Windsor incident.)

ATTACHMENT 3 TO AFOREGOING LETTER DATED 3/12/75

Freshfields
Grindall House
25 Newgate Street
London EC1A 7LH

24th February 1975

Dear Sir:

Mr. Robert Gulbenkian has referred to us your letter of the 5th February. We are asked to confirm on his behalf and on behalf of all those connected with the Calouste Gulbenkian Foundation, to whom from time to time you write and send documents, that neither the Foundation nor any of them is in any way concerned or indeed interested in any proceedings or other activities concerning yourself. It is for this reason that none of your letters are acknowledged. We refer you in particular to the letter dated 19th August 1974 from Chadbourne which makes it quite clear that the Foundation is in no way involved.

Yours faithfully,

/Charles L. Whishaw/

John F. Costelloe
216 Little Neck Road
Centerport
New York 11721
New York
USA

CHAMBERS OF
ORRIN G. JUDD
DISTRICT JUDGE

UNITED STATES COURT
EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST
BROOKLYN, N. Y. 11201

March 13, 1975

Harold L. Warner, Esq.
30 Rockefeller Plaza
New York, N.Y.

John F. Costelloe, Esq.
216 Little Neck Road
Centerport, N.Y. 11721

Re: Costelloe v. Transworld Airlines, Inc.
75-C-157

Dear Sirs:

In response to Mr. Warner's request at the hearing of February 7, 1975, that I initiate disciplinary action because of alleged unprofessional conduct by Mr. Costelloe, I suggested that any supplemental papers be submitted within thirty days.

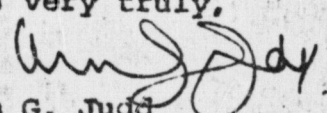
Mr. Costelloe's letter of March 10, 1975 with attachments, appears to be a response to Mr. Warner's statements.

Meanwhile, Mr. Costelloe has filed a notice of appeal, and the papers should be promptly made available to the Court of Appeals.

Since there is a certain interrelation between the sealed papers before Judge Conner in the Southern District and the case before me, and since Mr. Warner is familiar with both matters, it appears to me that any initiative for disciplinary proceedings should be taken by Mr. Warner, through an appropriate bar association.

The sealed file in this case will be transmitted to the Clerk of the Court.

Yours very truly,



Orrin G. Judd
United States District Judge

JOHN F. COSTELLOE,

Plaintiff-Appellant,

v.

TRANS WORLD AIRLINES, INC.,

Defendant-Appellee.

CIVIL APPEAL
SCHEDULING ORDER # 1

Docket No. 75-7162

nf Noting that John F. Costelloe, Esq., Pro Se
~~counsel for the appellant John~~

has filed a Notice of Appeal on March 10, 1975 in the Eastern
District of New York and a Civil Appeal Pre-Argument
Statement on March 17, 1975
and Transcript Information on March 17, 1975
and being advised as to the progress of the appeal,

IT IS HEREBY ORDERED that the record on appeal be
filed on or before April 2, 1975;

IT IS FURTHER ORDERED that the appellant's brief and the
joint appendix be filed on or before April 23, 1975;

IT IS FURTHER ORDERED that the brief of appellee be
filed on or before May 23, 1975;

IT IS FURTHER ORDERED that the argument of the appeal be
ready to be heard during the week of June 9, 1975.

IT IS FURTHER ORDERED that in the event of default by appellant in filing the record on appeal or the appellant's brief and the appendix by the time directed or upon default of the appellant regarding any other provision of this order, the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that if the appellee fails to file a brief within the time directed by this order, such appellee shall be subjected to such sanctions as the court may deem appropriate.

A. DANIEL FUSARO
Clerk

By *Nathaniel Fensterstock*
Nathaniel Fensterstock
Staff Counsel

Dated: March 17, 1975

CAMP 1

